Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

A COMPENDIUM CONCISELY COMPILED AND ILLUSTRATED, OR: Legal and solemn acts emanating directly from the Supreme Roman Pontiff: among these are those which can be made public by law, whether they are Decrees, Instructions, Responses, and other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, carefully compiled for a thorough understanding and observance of ecclesiastical law: finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of existing law: for the benefit of those diligently studying the laws of the Church, and laboring zealously in the governance of the Christian flock, or in cultivating the Lord's vineyard. Volume II.

"FROM THE STEREOTYPE PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1872."

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[*Latin ed. p. 3*]

FROM THE CONSISTORY ACTS. On the 25th of June, the Most Blessed Father, in a public Consistory held in the buildings of the Vatican, after receiving the testimony of obedience and the oath from the Cardinals recently created, according to the prescribed formulas, bestowed upon them the cardinal's hat; and after completing the other customary ceremonies, he held a secret Consistory, in which he addressed all the Eminent Fathers, inquiring, among other things, about his desire to add the Blessed Martyrs of Gorcum and the Blessed Mary Francis, from the Order of Five Wounds of Christ, to the Book of Saints. Therefore, the Eminent and Reverend Cardinal D. C. Patrizi, Bishop of Portus and of S. Buphina, as Prefect of the Sacred Congregation, was ordered to present the causes of these Blessed individuals, so that, after the cause was known, the Fathers might give their judgment. Then, the Eminent Prefect of the Sacred Congregation reported first about the Blessed Martyrs of Gorcum, who were: Nicholas Pie, Jerome Werden, Theodoric of Ernbden, Nicasius Johnson, Willmdus of Dania, Gofired of Merveille, Anthony of Werden, Anthony of Hornaire, Francis Rhodes of Brussels, all priests of the Order of the Minor Observants of St. Francis; and Peter of Asca and Cornelius of Dorestate, laymen of the

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same Order. Furthermore, John, a priest of the Order of St. Dominic, and Hadrian of Hilvarenbeck, and James Lacop, monks of the Praemonstratensian Order; John Ostervican, a regular canon of the Order of St. Augustine; Leonard Wichel, Nicholas Poppel, Goffred of Corcarci, and Andrew Walter, secular priests and parish priests. He briefly recounted the martyrdom of these ten and nine Blessed individuals, which occurred on the 9th of July in the year 1672, the cause of which was the hatred with which the Calvinists of Holland burned them. Then he also reported about the miracles that had occurred through the intercession of these same Blessed Martyrs; and finally, he briefly presented a summary of the things that had been done in the preparation of the cause.

[*Latin ed. p. 4*]

I. FROM THE CONSISTORY ACTS. After these things, the Supreme Pontiff asked the assembled Fathers whether it seemed fitting to them to proceed with the solemn canonization of the aforementioned Blesseds. All of them, individually, assented. Then, the Most Reverend Cardinal Prefect began to present the cause of Blessed Mary Francis, a Third Order professed member of the Order of Friars Minor of St. Peter of Alcantara, of the Neapolitan Province, and, after briefly recounting her life and virtues, he concluded by presenting a summary of the acts that had been completed in the process of her beatification and canonization. After these matters were concluded, the Most Reverend Fathers were asked by the same Pontiff, and they all, individually, gave the same response. Then, the Blessed Father, expressing and confirming his will to carry out both canonizations, promised to convene another consistory, in which, not only the Most Reverend Fathers, but also Bishops would be convened, in order to seek their opinion and support, so that he might conduct himself with prudent counsel in this matter of such importance.

II. THEREAFTER, THE FOLLOWING CHURCHES WERE PROPOSED AND DESIGNATED:

The Archdiocesan Church of Colossei, in the Territories of the Infidels, to the Reverend Anthony Rossi-Vaccari, a Roman priest, Domestic Prelate of the Most Holy Father, Canon of the Patriarchal Archbasilica of the Lateran, Presbyter assisting in the Papal Chapel, and Auditor in the Camera of the Holy Roman Church.

The Cathedral Church of Pharen, in Dalmatia, to the Reverend George Dubocovich, a diocesan priest of Pharen, Prefect of that Cathedral, Vicar Capitular of that city and diocese, and Doctor of Sacred Theology.

The Cathedral Church of Guadix, in Spain, to the Reverend Mariano Brazmes Arredondo, a priest of the Legion, Rector of that parish, and Canon Penitentiary in that Cathedral, and Licentiate in Sacred Theology.

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The Cathedral Church of Aurigen, in Spain, to the Reverend Joseph de Cuesta y Maroto, Canon Lectoral of Salamanca, Professor of Holy Scripture in that city's Seminary, and Doctor of Sacred Theology.

The Episcopal Church of Teien, in the Territories of the Infidels, to the Reverend Mariano Ortiz Urruela, a priest of Guatemala, Promotor Fiscal in that Archdiocesan Curia, and Chaplain there in the monastery.

[*Latin ed. p. 5*]

FROM THE CONSISTORY ACTS. On the fifth day of August of the Most Holy Conception, the degrees of Bachelor were conferred, and the Reverend Father Thomas Michael Pineda y Zuldana, Bishop of San Salvador in Central America, was appointed Coadjutor with the right of succession to the Most Reverend Archbishop of Nyssa, in the Parts of the Infidels. The Reverend Father Angelo Di Pietro, a priest from Tiburtina, was appointed General Vicar of Ostia and Velletri, and Suffragan Delegate. Finally, the Most Blessed Father, as they say, openly addressed the newly created Cardinals, and designated specific titles to each of them: the presbyteral title of Saint Peter in Monte Aureo to the Most Reverend and Most Illustrious Cardinal Cullen; also the presbyteral title of Saint Mary Transpontina to the Most Reverend and Most Illustrious Cardinal de Hohenlohe, releasing him from the bond with the Archiepiscopal Church of Edessa, in the Parts of the Infidels; also the presbyteral title of Saint Lawrence in Pane and Perna to the Most Reverend and Most Illustrious Cardinal Billio; the diaconal title of Saint George in Velabro to the Most Reverend and Most Illustrious Cardinal Matteucci, who died in Rome a few days later; and also the diaconal title of Saint Mary in Domnica to the Most Reverend and Most Illustrious Cardinal Consolini. Finally, the aforementioned Fathers, newly elected, were privately received by the Pontiff, who presented them with rings in their own homes.

[*Latin ed. p. 6*]

6. FROM THE PROCEEDINGS OF THE COUNCIL. MARRIAGE. June 10, 1865. Session 24, Chapter I, Reform of Matrimony. A summary of the case. In the year 1849, a marriage was celebrated before the Church, after the observance of civil laws according to the custom of Gaul, between Caius, who was seventeen years of age, and Titus, who was twenty-nine years of age. After two and a half years had elapsed, at the request of Caius, a divorce was granted by the judgment of a judge. However, in the year 1861, at the instigation of others, the young woman requested that the marriage be declared invalid due to lack of consent. I say "at the instigation of others," because Caius was of the opinion that the marriage was entirely valid, and she had forgotten all those things which could have been brought forward in favor of the nullity of the marriage. However, the Bishop referred the supplications of the young woman to the Apostolic See. The Con-

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gregation of the Council wrote to the same Bishop, requesting information and an opinion, and that he report on the events preceding, accompanying, and following the celebration of the marriage. The Bishop, fully satisfied with these requests, after hearing several witnesses outside of a formal judicial proceeding, issued his opinion in favor of the nullity of the marriage. Upon receiving this information and opinion, the Most Holy Father ordered that a letter be written to the Bishop, so that, as a delegate of the Holy See, he might complete the process, observing at least in substance the Constitution of Benedict XIV, which begins: "By the mercy of God..." with the faculty even of delegating another, or others, to receive the testimony of men and other witnesses, so that, considering the circumstances and additions of the case, their examination could not be held before the Bishop. This was also fully satisfied. What could not be obtained, however, was the examination of Titus and his mother, who refused to appear before ecclesiastical authority, although every effort was made to induce them to do so. However, Titus went to the Archbishop of Parisiensem.

[*Latin ed. p. 7*]

MARRIAGES. 7 "When the task of examining the case of Titus was delegated to me, I wrote a letter in which I expressed my astonishment that an investigation could be instituted concerning a marriage, which establishes a perpetual bond. Furthermore, the following account is presented, based on the documents transmitted by the episcopal court, in the presence of the Defender of the marital bond. Caia, orphaned by the death of her father, had been received into a Christian institution, where she had demonstrated examples of piety and virtue. However, from the age of 12, she began to exhibit signs of levity and mental instability. Moreover, after being taken from the institution to her mother's home, these signs became even more pronounced. At times, her conscience was troubled by scruples, and at other times, she would become angry if her irrational ideas were not followed. Whatever she did, whether it was due to moral coercion from her mother or her own will, it was evident that she did not reflect on her actions. This, however, appears to be the main reason why, given the opportunity, her mother decided to give her in marriage to Titus. For, according to the opinion of doctors and the common people, marriage was considered a remedy to correct these defects in the girl. Furthermore, Titus was much wealthier than Caia, although he was known for his stubborn nature, his dissolute morals, and his public notoriety. However, when this plan of her mother was revealed to the girl, she vehemently rejected it, both in words and deeds. She often repeated that she would never marry Titus. She also avoided Titus as much as possible; and when he asked her to be his wife, she constantly replied: "I will think about it." For Caia did not find Titus attractive, and she considered his behavior to be deformed, dishonorable, and foolish. However, both of Caia's mothers were in complete

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agreement that the marriage should take place. When Caia learned that both of her mothers had arranged the marriage, the next day she went to her younger sister, and together they fled from their own home. That night, they left through a window, tied together with ropes, intending to go to Paris, without any plan. However, as was to be expected, after a short journey, partly by carriage, they returned home, exhausted, lost, and weeping. Witnesses..."

[*Latin ed. p. 8*]

8. MARRIAGES. All parties involved affirmed that Caia had fled in order to avoid marriage with Titus, to which she was being morally compelled to consent. However, this flight did not achieve what Caia desired, but rather made her situation more difficult. Her mother and her uncle were pressing her more and more to conclude the marriage; they treated the girl as if she were marked with disgrace, using threats, and other moral means to influence the girl's mind, especially threatening to confine her in certain remote and desolate dwellings, which Caia vehemently abhorred. Furthermore, to add to the injury that was said to have been inflicted upon Titus and his family by Caia's flight, she wrote two letters: one to a friend, and one to Titus's mother. In the first, she expressed that she loved Titus very much, and desired their marriage. However, Caia's mother testified in the judicial process that she had written these letters, and that she had instructed her daughter to write a similar example. On the day that the marriage was to be celebrated, Caia and her relatives went to the groom's house; however, she persisted in her will, as witnesses reported, to reject Titus, pleading that she could not give a positive answer. Thus, as the groom and his party proceeded in solemn procession to the civil magistrate, in order that, according to Gallic custom, a civil act might precede the marriage, Caia's mother was greatly afraid that the girl would refuse the marriage until the very last moment. Therefore, at that time, both Caia's uncle and, especially, her mother did not avert their eyes from the bride. Before the magistrate, Caia secretly questioned the clerk, asking whether she still had the power to give a negative answer; to which he, through error, replied: "No." And then, looking at her mother, the girl answered affirmatively to the question posed by the magistrate. With this affirmation given in favor of the marriage, the mother sighed with relief from her anxiety. Then, proceeding to the parish church to celebrate the marriage, Caia appeared to stop at the very entrance of the church; therefore, her uncle, although not violently, took hold of her hand and led her forward, and before the priest, she performed the marriage ceremonies. There are witnesses who testify to both of these actions.

[*Latin ed. p. 9*]

MARRIAGES. 9. Whether civil or ecclesiastical, they declared that Caius

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found it to be most pleasing. After the marriage was celebrated, and upon arriving at the groom's house, Caius signed his name with his own hand in the marriage book before the Parish Priest. These facts are taken from the records, and some of them can be more clearly understood from the following argument of the Defenders. A synopsis of the argument. DEFENSE OF THE MATRIMONIAL BOND. The Defender of the marriage, at the beginning, noted certain defects in the proceedings, among which was the lack of an examination of Titus, which examination pertains to substantial formalities. However, setting aside these matters, he insisted above all on demonstrating that in the present case, there was no basis for asserting the nullity of the marriage. For, since the marriage was celebrated in the sight of the Church with the proper formalities, a presumption arises that all else was in order; especially if the matter concerns a marriage not only valid, but also consummated, and with children born from it; in which case, unless the contrary is demonstrated, the presumption should be upheld with all its force. Furthermore, the Defender maintained that such proof was not present in this case. For, if one considers the cause of the aversion, it was not constant. For, as the witnesses testified, after the origin of the aversion was known, which was Titus's unsightly appearance, it was arranged that Titus would not appear before Caius unless he had shaved his beard and taken care of his appearance. Especially when dealing with women who are subject to changeable moods, as Virgil says in the Aeneid, I. 4: "Varium et mutabile semper foemina est" (Always changeable is woman). As Tibullus says in Book I of Elegies, 4: "Alterius mavult esse puella viri, sed flecti poterit: mens est mutabilis illi" (She wants to be the girl of another, but she can be swayed: her mind is changeable). However, proceeding to the matter of fear, although no one doubts that fear in a steadfast man does not invalidate a marriage, the Defender nevertheless observed that, in order for such fear to be considered invalidating, it is necessary to demonstrate that: 1. The evil feared is grave. 2. That the one who inspires the fear is capable of carrying it out, and is likely to do so. 3. And that the one who experiences the fear cannot easily resist; for if any of these conditions are lacking, the fear is considered slight. But the Defender maintained that the fear in the present case was not grave, because of a single incident, which both the mother and the sister-in-law mentioned.

[*Latin ed. p. 10*]

10. MARRIAGES. The circumstances, both within a certain family circle and within a certain Parisian society, were such that it was impossible for Caya to be displeasing: for in the former, she often resided within the family; in the latter, she most desired to reside after marriage, urging her husband to that end. He who issued threats was not easily carried out. For if one speaks of the Mother, it was rather the daughter who was rebuked by her mother, than the mother by the daughter, as testified by Caya herself

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in a judicial deposition: that she had never been habitually timid towards her mother, but rather, arrogant. But if the matter concerns the Nephew, after her flight and the initial discussions regarding marriage, the girl rarely saw him, and it is unbelievable that a man of standing would drive his sister, whom he wished to favor, to desperation. Finally, the patient could resist fear by fleeing to her mother, or by appealing to the President, or by invoking the Parish Priest, or even simply by escaping, as she had done before. For he who fled solely from the fear of a long-standing and possible evil, in the presence of such, would not only have fled, but would have fled in terror, if such a thing were truly believed. The Defender confirmed these conjectures with evidence and testimonies. Firstly, speaking of a letter sent to a friend, in which Caya wrote that she loved the man to whom she was married; he observed that the letter had not been sent to Titus, nor to his mother, but to Caya's friend; therefore, no one could deny that she had been compelled by her mother to write it. He drew another conjecture from the place where the girl resided on the morning of the marriage, and from the subsequent events. Indeed, she traveled a long distance from her own home to the home of the bridegroom, in order to marry, and with her hair neatly arranged, she mingled magnificently among distinguished men, friends, and relatives; and in a similar case, the Sacred Roman Rota speaks in the matter of Leuceorien. Marriage, July 1, 1726, before Calcagnino §. "The second [indication of free will in contracting marriage] is that the marriage was celebrated with magnificent pomp and ceremony, with a large gathering of nobles, and in the presence of a Bishop; this gathering of such distinguished men and their assistance is a strong argument against the presence of fear, since it would have been easy for the contrary will to be expressed, and for her freedom to be restored, simply by the expression of the contrary will of the girl herself, through words, etc."

[*Latin ed. p. 11*]

MARRIAGES. 11 Neither are such manifestations of contrary will or protests valid, if they were not made in fact during the marriage ceremony, before the other spouse, as Sperelli notes in a certain case, *Decis. for. - decis. 75 n. 13*, in which he wrote: "It did not appear that I was proven by the protests of Barbara, in which she declared that she did not understand that she was entering into a marriage with Marco Antonio, and that she was entering the church unwillingly. Not from a protest made before the celebration of the marriage; because, since it was not requested at the time of the marriage, the marriage is considered valid...." These considerations apply even more so, because here we are dealing with clandestine protests made in the absence of one of the parties, which contribute nothing to invalidating the contract. The Defender requested a third consideration, namely that the parish priest and the civil prefect, present during the act of contracting the marriage, and two other witnesses, testified that they had

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seen the girl to be very happy, and that they had observed no hesitation in the girl. Therefore, the Defender concluded, citing the authority of the Cardinal of Paris, *Const. 170, n. 22 Z. 1 vers.*, that such acts overflowing with signs of joy completely exclude a forced mind. Indeed, he who is compelled by fear, although he may conceal the internal movement of his mind, is nevertheless humbled and prostrate, as Tacitus remembers in *lib. 14 Annalium*. The fourth presumption is the signing of the marriage act in the bridegroom's house after the Mass, and this signature was found to be entirely accurate, and did not offer any indication of a disturbed mind. The fifth consideration that the Defender presented is the joy and happiness at the wedding feast, of which the parish priest and the civil prefect testified: that the guests were very happy, and that the bride appeared to be content. Furthermore, the Defender noted that, whatever may be the case regarding the coercion employed by the mother before the marriage was contracted, it is incontestably the law that a marriage cannot be declared invalid due to force and fear, unless it is established that the force and fear persisted until the very last moment in time, when the marriage was contracted, as observed by St. Bota in *Romana Matrimonii 1 Iulii 1726 coram Ratto*, and in *Lcnceorien. Matrimonii 10 Ianuarii 1727 coram Calcagnino*. And such force and fear did not...

[*Latin ed. p. 12*]

12. MARRIAGES. It can be argued, up to the moment of the celebration, based on what certain witnesses recount, namely, from the question posed by Caia to Tabellione, whether she still possessed the ability to give a negative response; from the gaze directed at the bride's face; and from the slow pace with which she approached the altar. For these things are contrary to what the witnesses recount regarding her joy and cheerful disposition, and therefore, either they demonstrate a deliberate consent in the act of the marriage celebration, or they are to be disregarded, the Defender maintained. Indeed, as in the case also considered by the Holy Roman Rota in Leuceorien, July 1, 1726, before Calcagnino: "A momentary and accidental lapse of spirit should not be attributed to an internal aversion to marriage, when all of her joy and festive spirit regarding the marriage are evident; for she, adorned and properly attired, approached with joy and festive spirit to the groom's house..." Thus, it is more likely that this lapse of spirit was caused by the discomfort of the solemn ceremony in which the marriage was celebrated, etc. For, as is taught there, by the Holy Roman Rota, it is not uncommon for young women, considering the solemn ceremony and the change in their status, to experience a momentary lapse of spirit amidst the many and varied thoughts that occupy their minds. Therefore, the Defender concluded that the records of the proceedings do not demonstrate the nullity of the marriage.

However, even assuming that a marriage is to be considered null if there

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is a lack of free consent, the Defender maintained that, due to a cohabitation of approximately three years, the marriage had been validated, so that the lack of consent, through such cohabitation and the resulting offspring, should be considered remedied. For, as the witnesses recount, the spouses lived together for a certain period of time in the accustomed manner of married life, with mutual care and marital affection, from which it is argued that a free consent to the marriage was freely given; and even if it had not been perfect, it should be considered confirmed and perfected, as Clement III teaches in chapter *Ad id* of *De Spons. et Matrim.*, in a similar case: "Although... she was unwillingly and reluctantly given in marriage at the beginning; nevertheless, because after a year and a half she appears to have consented, it must be attributed to her, and therefore, the witnesses who the aforementioned woman may have named to prove that she did not consent should be summoned, since such a length of time excludes such proof." This doctrine is illustrated by Sanchez de Matrim. I. 4, t. 18, n. 2, 3.

[*Latin ed. p. 13*]

MARRIAGES. Bossius, chapter 12, paragraphs 381 and 382. Panimolle, *Decisiones civiles, morales et criminales*, decisions 102, annotations 2, paragraph 1 and following. If it is said that a marriage contracted due to a lack of consent cannot be considered valid after the Council of Trent unless repeated according to the Tridentine form, except in the case where an impediment was hidden, the question arises as to when such a hidden impediment should be considered to exist. Furthermore, authorities generally require that, for an impediment to be considered hidden, the parish priest and witnesses must be unaware of it (Sanchez, book 2, chapter 37, on marriages; Ventriglia, in annotations, 4, section 11, on marriages, number 19). In the present case, however, the parish priest and the witnesses of the marriage were unaware of the impediment; for they either did not know that the woman had been coerced, or they testified that in both the civil and ecclesiastical marriage ceremonies, they had not observed anything extraordinary or hesitant in the girl, or that she had appeared very happy. Therefore, if there was an impediment, it should be considered hidden, so that the marriage may subsequently be validated by marital love.

DEFENSE OF THE WOMAN FOR THE NULLITY OF THE MARRIAGE. At the beginning, the Defender of the Faith noted that if some defects were found in the process, they should be attributed to the conditions of the place. For, due to the civil laws of Gaul, the bishops do not have the power to compel witnesses to appear before the ecclesiastical court; nor are the bishops subject to penalties in such cases, which could easily be disregarded. However, although not all procedural formalities were strictly observed, the number of witnesses present was so numerous that nothing more seemed to be lacking. Although the examination of

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Titus was absent, nevertheless, since it could not be obtained due to his contumacy, the way was open to the canonical provision of Innocent III, in chapter 5, section *Porro*. To avoid any dispute, it is stated there: "In such cases, if the contumacious party appears, against whom the action was directed (either because, having received a peremptory citation, he disobeys, or because he maliciously hides himself, or because he prevents the citation from reaching him), the witnesses who are not present in the lawsuit should be admitted; and nevertheless, if the cause warrants it, the proceedings should continue to a final judgment." Having made these observations regarding external matters, the Defender endeavored to present a thorough defense of the nullity of the marriage due to the lack of free consent, and especially due to moral coercion. From the depositions...?

[*Latin ed. p. 14*]

14. OF MARRIAGES. Furthermore, having been confirmed by the oath of witnesses, did these three things demonstrate? 1. That Caius did not wish to marry Titus. 2. That the marriage was celebrated only after Caius's freedom had been violated by coercion. 3. That the effect of the coercion was particularly evident in the act of marriage itself. The defender clearly demonstrated the first point; for the witnesses, with almost one voice, described Titus as a man given over to vices and depraved, brutal and dishonorable. They also testified that the girl constantly abhorred him, so much so that, up to the time of the marriage celebration, the girl had vowed to her mother that she would never consent to that marriage. The mother testified to this vow before Caius's cousin. And this was the reason why the mother, aided by the aforementioned cousin, proposed to keep her eyes away from Caius. But, besides this, Caius's complete aversion to marrying Titus was further demonstrated by her nocturnal escape through the window, the very day before the marriage was to take place. In this way, the defender opened the way to demonstrate the second point, namely, that the marriage was celebrated only after Caius's freedom had been violated by coercion. The witnesses also spoke of this coercion, and they presented it as something notorious, so that they believed that Caius had not been free, and that she had been forced by her mother, by her cousin, and also by her aunt, to marry Titus. The defender described the nature of the coercion in this way: "You will not find weapons, nor blows, nor torments, which would knock down any courageous athlete or gladiator, but rather other things which can be used against a young girl, born in a noble family, and raised with delicate upbringing: threats of solitude, of confinement, and the offense of an inevitable maternal death." This occurred before the escape. Afterwards, the parents considered it necessary to guard the girl more vigilantly, often rebuking her as unruly and dishonorable, and constantly threatening her with confinement in a deserted country house, so that, affected by fear, she was induced to receive Titus into her home. Moreover, Caius's rela-

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tives insisted on her in every way, in order to break her resistance, all the more because they feared that she would consent to the marriage. Both the mother, whether of Titus or of Caius, were of this mind, promising a remedy from this marriage, one for the bad morals of her son, who would not have a more honorable girl, the other for the foreseen folly of her daughter, according to the opinion of the doctors.

[*Latin ed. p. 15*]

MATRIMONY. 15. It seemed difficult for Caia to enter into marriage, given the widespread notoriety of the matter. After these points, the Defender proceeded to demonstrate a third, namely, that the effect of coercion was particularly evident in the act of marriage itself. For, as the girl left her home to go to the civil magistrate, her mother, Anzi, was greatly distressed. One witness testified: "The mother of Caia warned me that she was very afraid that her daughter would 'remain steadfast until the very last moment.'" Another witness recounted how the girl was agitated, saying: "As the bride was dressing before leaving, I saw her crying and tearing at the coverings of her hands; she said that she could not possibly give an affirmative answer." The mother testified under oath that, on the way, "her daughter turned her eyes to the windows of the house, her mind troubled; and this was the reason why she was trembling, so that others would pay more attention, and observe the girl's distress; in the house of the civil Prefect, she repeatedly looked back towards the door." Meanwhile, the time had arrived to answer before the Prefect, and the girl was contemplating how to express her dissent. But since there could be no place for open and violent coercion, Caia was deceived, with the urging of the suitor, into believing that the matter was more settled than it was, and that she could not oppose the marriage. Nevertheless, the girl, in a way, questioned her mother; regarding which, the kinsman testified: "When Caia seemed to hesitate before the civil official, I observed the mother's great distress; she sighed, as if relieved, when she heard her daughter give an affirmative answer. I still remember that Caia looked at her mother before she pronounced the word of affirmation." Without delay, the parties went to the church; and considering the circumstances, the Defender pointed out that the girl had now reached a point where, after having given her consent shortly before, she could not, without great astonishment to all, and without any sign of fickleness, manifest a contrary will; yet, clear signs of hesitation, and the anxieties of coercion, had been evident. For, when the girl was in the church and refused to proceed, the kinsman pushed her with his hand to make her go forward. Thus, the other witness recounts: "In the church, I saw the kinsman push Caia with his hand, who seemed to be retreating." The

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kinsman confirmed this, saying,

[*Latin ed. p. 16*]

16. CONCERNING MARRIAGES: "I observed," he said, "that there was a certain hesitation in Caia... I instructed her to proceed, but without coercion." Caia's mother then stated: "At the entrance of the church, Caia did not proceed willingly, and she appeared disturbed. I then told her, in her presence, that if she still caused scandal, including by remaining unmarried, she would perish in sorrow, and that she must obey." After the marriage ceremony, it seemed that Caia had foretold her own unhappiness: when one of the witnesses addressed Caia with the words, "Now you are joined in a bond," she replied, "That is true, but I will never be happy."

The Defender then addressed the esteemed fathers, inquiring as to their judgment if a will were made under such circumstances; and he added: "Or do you believe that less freedom is required in marriage than in a will?" After these remarks, the Defender presented the testimonies of those who had declared Caia to be happy at that time, and he noted that these general testimonies did not contradict the specific facts. It is not surprising, he argued, that the parish priest, standing at the altar, did not observe what had been done with a glance, a gesture of the mother, or the urging of the suitor. Nor is it surprising that the girls, questioned by the scribe, did not understand the situation. However, anyone who has seen brides, he continued, will surely remember how greatly they are agitated on festive occasions, amidst the congratulations of all, and in the novelty of the situation, so that a great disturbance often resides in their hearts, even though a semblance of joy appears on their lips.

Regarding the objection raised based on the signature of the girl's name, which was carefully examined and found to be genuine, the Defender observed that the girl had not signed her name immediately after the marriage, but after the celebration of Mass in the house of Titus; and that the girl was so composed that even with a disturbed mind, she was able to write her name with a firm hand, as she demonstrated in the very judicial proceeding before the Bishop.

As for the letters, of which one was written by Caia to her friend after the aforementioned flight, and the other to her mother-in-law, the Defender noted only a few things; for it was sufficient for him to indicate that knowledge of these letters was obtained only from Caia's religious and voluntary confession, which she made during the initial inquiry by the Bishop.

[*Latin ed. p. 17*]

MATRIMONY. The girl, having forgotten seventeen letters, again undertook a long journey to assure the Bishop more fully before giving him the letters to inform the Holy Congregation. However, concerning these letters, as with the circumstances previously recounted in the celebration

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of the marriage, the girl could say nothing from her own side, since all of them had fled from her memory. Nevertheless, the mother testified under oath that she had written them, and that she had ordered Caia to have a copy made. Having presented this discussion of the facts, the Advocate proceeded to the legal question. He, however, made distinctions, which, as some authors state explicitly, and which indeed should be of great weight, namely, that fear must of itself be grave; that fear can confer the power to execute; that it is accustomed to be executed, and other things of this kind; although he endeavored to show that all these circumstances concurred in the present case. He observed that fear can be made more or less intense according to the affections of the mind: one, indeed, does not fear death; another is moved by the threatening brow. Whether fear has violated free will, it must be inquired in the passive estimation of the subject, and not in the opinion of others, as Barbosa teaches in *voti decis.* I. 1, n. 26. "Fear is made more probable if, without consideration for the person who inflicts it," the Rota states, using these words: "for boys, in whom there is no use, and who judge all things to be greater than they are, are led to fear even the most trivial things, because of the immaturity of their age." And this, we say, is not only true of the fear which is called *coactivum*, but also of reverential fear. Zypaeus, in *consult.* 4, apud Van-Espen, p. 2, sect. 1, tit. 13, n. 11, wrote: "When, however, it is truly established by the judgment of a prudent man that, although the cause may seem light, it has nevertheless caused a very grave fear, and that only in order to demonstrate that spontaneous consent was lacking, I do not hesitate to say that the marriage should be considered invalid, because it makes no difference by what fear anyone was compelled, provided it is established that the compulsion existed." And the Rota has taught such doctrine in *decis.* 491, *Cor. Royas*, n. 4, seq. - there - "under these circumstances, it does not seem necessary to discuss the cause of the fear itself, nor whether it fell upon the man constantly, since this discussion is to be admitted when from the facts no proof of fear results. The Abbot, etc., and deservedly, because fear is nothing other than the trembling of the mind concerning present or future evil."

[*Latin ed. p. 18*]

18. OF MARRIAGES. Furthermore, citing the teaching of the authorities, who state that reverential fear is sufficient to render a marriage invalid, the Defender concluded, relying on the authority of Sehmalgrueber, *t. A, p. 1, tit. 1, § 393, which keenly addresses our case: "It follows that a marriage... contracted by a virgin with a young man, whom she rejected, solely out of reverence for her parents, when joined with a likely estimation of indignation, reproaches, harsh treatment, and similar inconveniences, is invalid." And indeed, when it is a question of entering into marriage, whatever the school may teach, full freedom is required, both simply and conditionally, the Defender asserted. Thus, Alexander III, in chapter 14 on "Spouses,"

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states: "Where there is no place for consent where fear or coercion intervenes, it is necessary that, where the consent of each is required, the matter of coercion be repelled. But marriage is contracted solely by consent, and where this is questioned, it must enjoy full security, whose mind must be investigated." Therefore, Sanchez, *l. 4, disp. 6, n. 2, teaches: "Many quite probably say that grave fear, justly instilled, invalidates marriage, although it does not invalidate other contracts. And the reason may be; for in marriage, greater freedom is desired than in other contracts." The same is stated by Pontius, *de imped. matr., cause 31, questions 2 and 3, § 13: "Because for it (marriage) a greater and more perfect freedom is required than for other civil contracts. Which is gathered by D. Thomas, etc." With all of this, to demonstrate the lack of free consent, the Defender added a mental defect, of which he had given some indications of the girl before entering into marriage. Furthermore, in order to refute the difficulty arising from the long cohabitation of the spouses for a period of two years and a half, with offspring, the Defender, through ample argument, demonstrated that the marriage had not been ratified by Gaia, first, from the fact that serious disagreements, lawsuits, and quarrels occurred between the spouses, up to divorce; second, because the girl was under the impression that the marriage was valid, in which case, renewal of consent could not be had; and finally, because after the new form introduced by the Council of Trent, it cannot be validated.

[*Latin ed. p. 19*]

MARRIAGES. A marriage, which may be shown to be invalid in the external forum, unless repeated solemnities are observed (1). These matters having been debated most copiously by both parties through their Advocates (2), the proposed question is to be resolved: "Whether it is established that a marriage is null in this case." RESOLUTION. – The Holy Congregation of the Council, having knowledge of the matter, on the 10th of June, 1865, judged it fitting to respond affirmatively. From this, the following are gathered: I. A marriage between persons who, according to both natural and ecclesiastical law, are suitable for it, is contracted solely by consent, provided that the Tridentine form is observed where the decree of Trent is in force. II. However, not any consent suffices to contract a marriage; but that consent which is free from grave coercion and fear. III. For this particular contract, which originates from the mutual love of the contracting parties, guided by nature, carries with it very grave obligations by divine law, which the contracting parties cannot decline, especially the perpetual bond by which they remain bound. IV. Therefore, consent obtained by force and fear from a reluctant party has no proportion to the matrimonial obligations, which, arising from the nature of marriage, must be sustained by the contracting parties by a freely given consent. V. Hence, a marriage entered into by force and fear is, by its very nature, null, whatever may be

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said about other contracts (3). (1) See Appendix I. (2) The Advocate, as is customary, maintained the validity of the marriage; while the Lawyers, Charles Modesti, and Salvator Martini, defended its nullity. (3) Other contracts entered into under fear are not generally considered to be null by their very nature, but must be rescinded by a judicial sentence if force and fear are proven. But this cannot be said of a marriage contracted by force and fear; for if it were not null by its very nature, it could not be further rescinded by a judge, since it establishes a perpetual bond by divine law. Although it is certain that a marriage contracted by force and fear is null by its very nature, not all agree on the question of by what law the marriage is null by its very nature; some believe it to be by ecclesiastical law, others by natural law; and the latter opinion, which is commonly accepted, seems to be sufficiently demonstrated by the absurdity that would result if a contract that is irrevocable could be constituted by consent obtained by force and fear, in a matter not of the alienation of things, but of the mutual alienation of the contracting parties themselves, for the purpose of establishing the origin of offspring in a perpetual state of life, founded on mutual faith, and mutual love. Therefore, although...

[*Latin ed. p. 20*]

20. MARRIAGE. VI. The proof of violence or fear being grave can be established in two ways: a) either by demonstrating that the nature of the coercion or the cause of the instilled fear is grave, or b) by demonstrating that the effects of the coercion and fear have produced in the person subjected to them consequences that are otherwise light. VII. This second method of establishing coercion is called the moral proof of coercion or reverential fear; the first method is called the solemn, juridical proof of violence and fear affecting a steadfast man. VIII. This solemn proof must be understood in two ways, namely, absolutely and relatively. For violence, or the cause of fear, can be absolutely terrifying to anyone, or relatively terrifying, taking into account the persons involved, who are considered steadfast in their own order. IX. Therefore, violence and fear are considered grave, even if they only affect a steadfast boy, or a steadfast girl, or a steadfast old man, etc., according to the order of the persons to whom the coercion and fear apply. X. In the present case, coercion and reverential fear intervened, to which a reluctant girl was subjected until the celebration of the marriage. XI. Finally, it must be understood that a marriage contracted under violence and fear is not validated after the Council of Trent by the cohabitation of the spouses, even if children are born from it. Fear does not simply cause consent to cease; rather, it removes the quality of freedom that is required in marriage, which freedom is absolutely necessary according to the law of nature. (1) Sanchez de Matrim. I. 4. dis. 3 n. 4 writes: "When it is said that fear falls 'upon a steadfast man,' it is understood to mean 'no matter what the man's strength of mind may be,' according to his condition." (2) See

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Appendix I.

[*Latin ed. p. 21*]

21. CONVENTUAL MASS. January 28, 1865. Session 24, chapter 12 concerning Reform. The following is a summary of the facts. Pope Pius VII, of blessed memory, in his Apostolic Letters, "De salute animarum," published on July 16, 1821, concerning the organization of dioceses in the Kingdom of Prussia, § 11, established that the respective Chapters of the cathedral churches of Treves and Paderborn should consist of two Dignities, eight numerated Canons, and four honorary Canons, as well as six Vicars or Prebends. He also assigned revenues in a certain proportion to the Canons and to the Vicars or Prebends. From that time forward, the Conventual Mass was celebrated in the prescribed order, both by the Canons and by the Vicars, but in such a way that the Vicars celebrated and applied it much more frequently than the Canons; and this alternating order was subsequently confirmed in the capitular statutes, approved by the Bishop. However, in the most recent provincial synod held in Cologne, the following was established concerning the Conventual Mass: The Conventual Mass should be celebrated daily, and applied for the benefit of the cathedral church, in turn by the Dignitaries and Canons, since this is a canonical obligation incumbent upon them by their capitular benefices. The acts of the aforementioned synod were transmitted to Rome for review, and the Holy Congregation established for the review of provincial councils ordered that, after the citation of the Council of Trent in that chapter noted in the Cologne synod, the encyclical of Pope Benedict XIV, "Cum semper oblatas," in which the obligation of the Chapters to celebrate the Conventual Mass is treated masterfully, should also be added. However, after the celebration of the Cologne synod, the question arose as to whether only the Dignitaries and Canons were bound to celebrate and apply the Conventual Mass; or whether the Vicars in the Chapter of Paderborn were also bound. The arguments that were presented are as follows:

ARGUMENTS:

IN FAVOR OF THE VICARS. — It was observed that it did not seem consonant with equity that the Dignitaries...

[*Latin ed. p. 22*]

22. OF THE CONVENTUAL MASS. And the Canons, who receive greater fruits from their benefices, are much less obligated than the Vicars or Prebends, who receive revenues from smaller benefices, to celebrate and apply the Conventual Mass; especially since the Vicars themselves often exercise the ministry of caring for souls in the cathedral church. Nor did the observance and the Capitular statute, approved by the Bishop, seem to obstruct this, for the Chapter does not have the power

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to establish statutes that are not lawful and honest, and contrary to the sacred Canons. Especially since, in a provincial synod, it is otherwise established, which makes a particular law for the entire province. For the provincial synod is to establish "those things which pertain to the proper administration of duties in divine services, and concerning the appropriate manner of singing or chanting in these matters, concerning a certain rule for assembling and remaining in the choir, and also concerning all the ministers of the church, which are necessary, and if any of these..." (are to be prescribed) for the benefit of each province, and to instill in everyone a certain form of conduct. Council of Trent, Session 24, on Reform, chapter 12, at the end.

THOSE THINGS WHICH FAVORED THE CANONS. – The aforementioned Constitution of Benedict XIV. Since it is read that the oblation, "of this kind," does not refer to individual benefactors, but to benefactors in general of any church, to whose service all those who obtain therein either dignities, or canonries, or prebends, or choral benefices, are bound, and who celebrate the Conventual Mass in their respective places: it was observed that the Vicars, of whom we are speaking, enjoy a choral benefice and constitute a part of the entire Chapter; and therefore, they too are to be held obligated to celebrate and apply the Mass for the benefactors in general. This has also been declared on several occasions by the Holy Congregation of the Council, as can be seen in Auximana, December 16, 1820. However, since the aforementioned Constitution does not specifically determine the manner in which this obligation of celebrating and applying [the Mass] should be distributed among those attached to the choir, there seemed to be room for observance and custom, if any; especially if such observance is found to be confirmed by Capitular statutes approved by the Bishop, as can be seen from the practice followed by the Holy Congregation, as can be seen in Pienza, February 17, 1731, and in one [document] from Burgos, Saint Donnin, March 16, 1761.

[*Latin ed. p. 23*]

THE CONVENTUAL MASS. 23. Nor did these Vicars seem to complain about the weight of the burden; for provision had already been made for the deficiency in revenues in the aforementioned Benedictine Constitution, which prescribes that the alms for the Conventual Mass be taken from the mass offerings. This was consistently followed by the Holy Congregation, as in the document from Ferarra, March 18, 1719, in which, regarding the question: "Whether all members of the Chapter, whether they be Priests, or Deacons, or Subdeacons, are to contribute to the alms for the aforementioned three Conventual Masses, whether they participate in the distribution of the Mass or not," the response was: "Affirmatively, but from the mass offerings." Therefore, if the mass offerings were established by legal means, these Vicars would, for the reason of a heavier burden, obtain

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even greater emoluments. However, it appeared that provision had already been made for the present question. Indeed, the same question had been defined in a completely similar case, in the document from Muenster, on December 6, 1846. Concerning Vicars established by the aforementioned Apostolic Letters in the renewal of the Chapter of Muenster, the question was posed: "Whether the Vicars of the cathedral church of Muenster are obliged to offer the Conventual Mass gratuitously for the benefit of the benefactors; or rather, whether the Chapter is to pay them a stipend for this offering in such a case." And the Holy Congregation responded: "Negatively to the first part, affirmatively to the second, from the mass offerings, according to the prudent judgment of the Bishop, through a contribution from the revenues of all the Prebends." Therefore, the question was posed: "Whether and how the Vicars of the cathedral church of Paderborn are to celebrate the Conventual Mass in such a case."

RESOLUTION. – The Holy Congregation, after discussing the matter in the meetings on January 28, 1865, considered it appropriate to respond: "Affirmatively, the alms for the offering of the Conventual Mass being to be taken from the mass offerings, according to the prudent judgment of the Bishop, through a contribution from the revenues of all the Prebends."

[*Latin ed. p. 24*]

24. OF THE CONVENTUAL MASS. From these [documents], you gather: I. That all those who hold a choral benefice, and those who belong to the body of the Chapter, are bound to celebrate and apply the Conventual Mass for the benefit of benefactors in general. II. That the distribution of the days on which each person is bound to celebrate it depends greatly on the established observance and the statutes of the Chapter. III. In Chapters of more recent foundation, or those renewed, it is fitting that all contribute from their revenues to the establishment of the Mass, from which the alms of the Conventual Mass can be drawn. IV. The portion of the contribution is left to the prudent judgment of the Bishop, who, considering the income and the qualities of the persons, determines it according to his judgment. FROM S. CONGREGATIO DE EPISCOPORUM ET REGULA MONASTERII SUPER COMPENSATIONE. On January 19, 1866. The Abbess of the monastery of Rome, N., after hearing the Chapter of the Nuns, and having received information, on Wednesday, December 31, 1859, granted Titus, an expert in this profession, the right to succeed to the surgical office, in the event of its vacancy. Titus accepted this office, and immediately performed his duties as a coadjutor, with the intention of succeeding in the future. Meanwhile, a member of the lower order assumed the office of phlebotomist with an annual payment of six scudi. However, when the aforementioned office of Surgeon became vacant in the year 1862, another member of the lower order was dismissed, and he succeeded fully. But on December 31, 1863, the Abbess unexpectedly sent

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a letter of dismissal, a summary of the facts.

[*Latin ed. p. 25*]

MONASTERIES: CONCERNING COMPENSATION. He received 25, by which he was, indeed, made more certain that the nuns would no longer trust him in that same surgical office; and therefore, at the end of the year, he was to be dismissed from such office. But Titus, considering himself to have been wronged in honor and in right by this dismissal, presented his complaints before the Holy Congregation, which, according to custom, referred the prayers of the petitioner to him to whom they pertain, for information and judgment, after hearing those who have an interest. In the information received, it was stated that there was nothing against Titus concerning his morals or religion; nevertheless, it was not understood what Titus was seeking: if he was seeking compensation for the office performed in the capacity of an assistant, the matter could easily be settled with the monastery; but if he was seeking the restoration of his rights, it was not possible to grant that. But since Titus did not seem to be seeking his right concerning the restoration of his office, but rather compensation; in a particular meeting before the Most Reverend Prefect, in which questions of lesser importance are discussed before the Holy Congregation of Bishops and Regular Canons, a sum of 100 was determined in favor of Titus, as compensation. But since the monastery considered itself to be harmed by this determination, the cause was presented before the Holy Congregation, with both parties presenting their rights.

SYNOPTIC DISCUSSION: REASONS PRESENTED IN THE NAME OF THE MONASTERY. The Abbess of the Monastery stated that Titus had lost his standing in the monastery due to a lack of skill and a new method of treatment. She contended that this could be proven by three cases presented and explained, in which the nuns were not properly treated. After these explanations and with supporting documents, she concluded that Titus had already received his honorarium and could not demand anything more, since he was dismissed because of him, namely, because of treatments not performed with surgical skill.

TITUS' DEFENSE. Titus, defending himself, presented several documents that showed both his integrity of character and, especially, his expertise and knowledge in the surgical field; and he also presented testimonies of certain men who excelled in that field, by which the method of treatment used by him in the cases presented by the Abbess was proven.

[*Latin ed. p. 26*]

26. MONASTERIES: CONCERNING COMPENSATION. THOSE MATTERS WHICH WERE REQUIRED BY OBLIGATION. ●—It was held, as a matter of obligation, that the present question pertained to a contract of hire. For, not only are fixed properties leased, but also "services." The

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person who renders his service to the owner is called the "hirer." And not only are the services of mechanical arts leased, but also the services of intellect and sciences. The teacher leases his service to the student, the lawyer to his client, and the doctor to the sick. Therefore, the doctor is the hirer, S. Rota, Decree 296, paragraph 2, repeated in *De Luca*, section 18, on tutors, number 5; Zacchia, *De Salario*, question 7, section 5. Consequently, in favor of Titus, all the characteristics of this contract seemed to be present, a contract concerning which see L. 6, and following. He who has leased his services is obliged to receive the entire compensation for the entire time, if it is not due to his fault that the services were not rendered. Likewise, lawyers, if it is not due to their fault that the cause was not prosecuted, are not obliged to return the fees (previously received). Therefore, Zacchia, *De Salario*, question 22, number 8, writes: "If the person hired is simply hired for a certain compensation, and if, due to the fault of the hirer, the services are not rendered, the person hired is entitled to receive the entire compensation for the time during which he was hired, just as if he had actually and effectively rendered the services, provided that he was ready to fulfill every request of the hirer." Furthermore, from what has been stated, it seemed to follow that Titus had the right to a perpetual fee, since the monastery, while under his care, had assumed a life-long obligation. However, in the present case, it was observed that the contract had already reached the point where, by reason of the actions of the parties, it should be considered dissolved, as if it had never existed, and that the question concerned only compensation. What, however, could Titus claim as compensation? The president of the urban college of medical doctors determined this in the *summa*, section 185, in which *summa*, however, those things that Titus had already received seemed to be included. These things were observed in favor of Titus. On the contrary, in favor of the monastery, it was held that the hirer is obliged to pay the fees to the hirer, if the services were not rendered due to the fault of the hirer; but the opposite is to be said, if the services were not rendered due to the fault of the hirer, *De Luca*, section 18, on tutors, number 3. In the present case, although, according to the testimony of the nuns, the services of the hirer had ceased, nevertheless, considering this fact, the cause of the cessation of services was due to Titus.

[*Latin ed. p. 27*]

MONASTERIES: CONCERNING COMPENSATION. 27 It seems more fitting to consider this. For ignorance is assimilated to fault; and therefore, no place is found for compensation. Moreover, this seems particularly applicable in the present matter, which concerns the lives of people, and it appears that a tacit agreement exists in such contracts, that if the medical practitioner loses the trust of the client, there is a right to terminate the contract. Doubtful. "Whether and to what compensation a place is due in this case." RESOLUTION. — The Holy Congregation, having considered

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the question on January 19, 1866, decided to respond: That both parties have the right to withdraw from the agreement; however, considering the particular circumstances, there is a place for compensation, in a just and equitable manner, in the amount of one hundred scudi, as assessed by the Most Reverend Prefect; and furthermore, (1), From our COLLECTIONS: I. The loss of trust in a monastery regarding a medical or surgical expert, to whom the monastery has entrusted the perpetual, full, or semi-full right to care for the monastery, can result in the expert being simply dismissed by the monastery. II. However, a doctor dismissed in this manner can only demand a just compensation, not indeed a perpetual right of the same kind, but for the work actually performed, estimated in proportion to what is customary in the region (2). (1) A similar case was resolved in the same manner on the same day by the Holy Congregation. It concerned a doctor of another monastery of nuns, who had lost trust in him, and for which a serious reason appeared to exist. Furthermore, a doctor who had only served as a coadjutor for thirteen years without pay, with the right to succeed to the full position when it became vacant, requested compensation for the work performed without pay. Since there was no agreed-upon contract, the Holy Congregation, to the Bishop and Regular Canon who the doctor appealed to, having learned of the matter, responded: That there is a place for a just and equitable compensation, in the amount of 180 scudi; and furthermore. (2) Thus, for example, if the case concerns a coadjutor doctor who has not yet succeeded to the full position, compensation will be due for the work performed, considering it in proportion to what is customary in the region. If, however, the case concerns a doctor who has obtained the full and perpetual right, and who receives an agreed-upon fee, and if such a fee is usually small, but equitable in relation to its perpetuity, if the doctor does not remain in the position, then in this case also, a just compensation seems to be due. In both cases, with the termination of the agreement, it appears that an action in fact arises, as if no agreement had been made from the beginning.

[*Latin ed. p. 28*]

23. MONASTERIES: ON COMPENSATION. III. Indeed, although it seems that a contract of lease and the hiring of services, for the performance of labor or for a fixed fee, intervene in such cases; nevertheless, the consent which gives form to the contract is understood to be such that, just as a physician possesses the power to withdraw from an agreement at his discretion; so too, the religious family retains the power to consider whether, if it deems it better, the services rendered do not correspond to the preconceived opinion of the community. FROM S. CONGREGATIONE INSTITUTIONIS SOCIETATIS IESU. August 29, 1864. DECREE. "By the decree of this Holy Congregation, given on January 8, 1861 (1), concerning institutions and aggregations of confraternities or

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congregations, observance of the Constitution of Blessed Pope Clement VIII, beginning with 'Quaecumque,' is prescribed. From this, a doubt arose as to whether the power to establish and aggregate is to be considered valid, given that the Primary Congregation of the Most Holy Virgin, under the title [specified], according to what is contained in L. 22 ff. concerning the prescribed words: 'If I should give you garments to mend or to make, if you undertake this work gratuitously, an obligation is imposed; but if it is done for a price, or with a price established, then a matter of lease and hiring is undertaken.' But if this work is not undertaken gratuitously, nor is a price given or established beforehand, but the business is conducted with the intention that only later a price would be given, according to what is established among us; it seems that judgment should be given as if it were a new business, that is, according to the prescribed words." (1) See Appendix II.

[*Latin ed. p. 29*]

SOCIETY OF JESUS. The Annunciation in *Urbe* benefits from this. Therefore, the Reverend General Superior of the Society of Jesus, having taken care to present the following question to this Holy Congregation: "Whether the institutions and associations customarily made by the Congregation of the Most Holy Virgin, greeted by the Angel, established in the *romano* college, called Prima-Primaria, according to a particular and proper manner, by which the Directors of that Society have used, and still use, by virtue of numerous concessions from the Supreme Pontiffs, are included in the aforementioned decree of January 8, 1861."

The Holy Congregation, having held general assemblies in the Vatican buildings on August 29, 18ASS, having heard the votes of the Consultors, and having carefully considered the matter, decided to respond: "They are not included."

[Signed:] Ant. M. Cardinal PANEBIANCO, Prefect. Rev. Fr. Can. Cossa, Substitute.

SYNOPTIC DISCUSSION.

EXPOSITION OF THE QUESTION.

Clement VIII, in his most celebrated Constitution: "Concerning whatever things the Most Holy Apostolic See has prescribed on December 7, 1604, which must be observed under pain of nullity in establishing, erecting, and aggregating confraternities and congregations." He prescribed, namely, that only one confraternity of the same institute and genus may be established and aggregated in both secular and regular churches.

2. That the same be done with the consent of the Ordinary, and with the

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letters testimonial of the same.

3. That those establishing or aggregating a confraternity expressly and specifically communicate to it the privileges and indulgences, etc., granted specifically and in particular to the order establishing or aggregating, and not those by which they enjoy privileges through communication.

4. That the statutes of confraternities be examined and approved by the Ordinary of the place, and may be corrected.

5. That in aggregating and establishing confraternities, the formula approved by the same Pontiff be observed.

6. That the graces and indulgences communicated to the confraternity be promulgated only with the prior knowledge of the Ordinary.

7. That the confraternity shall receive alms and other charitable contributions according to the form prescribed by the Ordinary.

8. That said alms shall be distributed, at the discretion of the Ordinary, for the benefit of the church and other pious uses. And finally, some things concerning...

[*Latin ed. p. 30*]

30. OF THE SOCIETY OF JESUS. It prescribed the regulations for their treasurers, and for matters to be reserved. Information on this subject can be found in Ferraris, *Bibliotheca Canonica*, under the word: "Confraternity." Furthermore, when the Holy Congregation for Indulgences and Sacred Relics became aware of this, a decree was issued after deliberation, on January 8, 1861, in which, restoring the aforementioned Constitution to its former force, it also prescribed that the formula should be observed in such establishments and aggregations, in accordance with the aforementioned Constitution of Clement VIII (1). However, since a clause was added to this general decree: "derogating from any Apostolic provision to the contrary, even those deserving of special mention," doubts arose as to whether the Congregation known as the "Prima-Primaria" was included under this decree. This Congregation, enriched with the privileges of many Roman Pontiffs, uses the oldest formula for aggregation; and in some respects, it differs from those established by Clement VIII, and specifically, among other things, it differs from those prescribed in the first article of Clement's Constitution, which states that only one confraternity of the same institute and kind may be established and aggregated in both secular and regular churches, etc.

THOSE WHO FAVORED THE PRIMA-PRIMARIA CONGREGATION. The following reasoning demonstrated that the congregation of which we are speaking was not included under the aforementioned decree: for the decree of the Holy Congregation refers only to congregations that were included under the Constitution of Clement VIII, dated December 7, 1604; moreover, the Prima-Primaria congregation and those congregations at-

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tached to it were never included under the aforementioned Constitution of Clement; therefore, they are not included under the aforementioned decree. These propositions were demonstrated by the following reasoning. It is clearly evident from the very words of the decree that the Holy Congregation's decree refers only to congregations that are included under the Constitution of Clement VIII. For, at the beginning, it states that, according to the Constitution of Clement, a method for observing regulations had been prescribed for the establishment or aggregation of confraternities and congregations, etc. Furthermore, the decree itself notes that, over time, the prescribed method of aggregation has not been followed by everyone (1).

[*Latin ed. p. 31*]

OF THE SOCIETY OF JESUS. If these matters had been accurately observed, whether concerning the formula for aggregation, the communication of indulgences, or the payment of the aggregation tax. Finally, it validates all aggregations or foundations previously made contrary to the prescriptions of the Clementine Constitution, revoking its force in such aggregations or institutions. However, if the Decree complains about those confraternities which did not use the formula, nor communicated their privileges as the Pope had ordered; manifestly, the Decree speaks only of those confraternities to which this had been prescribed. Furthermore, if the Decree validates institutions and aggregations made contrary to the Clementine Constitution, it manifestly refers only to those confraternities whose establishment was invalid due to the neglected Clementine Constitution; and therefore, it concerns only those which were included under that Constitution. Finally, if the Decree revokes the force of the aforementioned Clementine Constitution, without extending it beyond its limits, it deals only with those aggregations about which the Clementine Constitution itself speaks. Therefore, etc. It remains, therefore, to demonstrate the second proposition of the presented reasoning, namely, that the Primatial-Primaries and those annexed to them are not included under the Clementine Constitution of December 7, 1604; which has been demonstrated with equal clarity. For the same Pope Clement VIII, in the year 1602, granted the Primatial-Primary the faculty of aggregating other sodalities, even in places where the Society of Jesus simply resided, and of communicating all the graces already granted to that sodality by other Supreme Pontiffs. For this purpose, he derogated from another of his Constitutions previously issued, with these words: "Notwithstanding our Constitution concerning not granting indulgences in the same manner, and other Apostolic Constitutions and Ordinances, and all other contrary things whatsoever." With this, it cannot reasonably be supposed that the Constitution issued two years later abrogated the previous one granted in favor of the Primatial-Primary, without mentioning it. But what completely removes all doubt is the authentic response of the "Sacred Congregation," made under Paul V.,

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in which it was declared: "Congregations, which in houses..."

[*Latin ed. p. 32*]

•32 OF THE SOCIETY OF JESUS. Or of colleges founded by the Society of Jesus, were not, according to the decree of Clement VIII, included; therefore, the Fathers of the Society could proceed against them, and accept and govern them, without any dependence on the Ordinaries, just as they had previously been accustomed to do. This was then expressly declared by Gregory XV in the Constitution *Alias pro parte*, dated April 15, 1621, with these words: "We decree that the aforementioned decrees of our predecessors, Gregory and Sixtus, and also these present letters (in which mention is made of the Prima-Primaria and other institutions affiliated with it), are not included under the Constitution *rec. mem.* of Pope Clement VIII, concerning the manner and form of establishing and aggregating confraternities." However, this was solemnly and most broadly declared by Benedict XIV in the Bull *Aurea*, dated September 27, 1748. These things were confirmed by considering the nature of the Prima-Primaria Congregation, which is entirely different from customary sodalities and confraternities of seculars; from which it was inferred that the Holy See had always reasonably declared that the Prima-Primaria was not subject to the Clementine regulations. For the aforementioned Constitution of Clement VIII included only those sodalities which lacked a proper form of aggregation; which did not properly communicate indulgences, and privileges granted to them by the Holy See; which demanded fees and sums at their discretion for admission, etc. Furthermore, from its very institution, that is, more than twenty years before the aforementioned Clementine regulations, the Prima-Primaria had a prescribed form, statutes, and rules; it explicitly communicated a list of indulgences, and did not admit any expenses of any kind, as it has maintained to this day. Moreover, by an ancient prescription made by the Generals, who are the promoters, visitors, and legislators of these congregations, it was forbidden to these congregations to wear special clothing, to have fixed revenues, or in any way to possess property; nor do they participate in public processions or other public ecclesiastical functions, nor do they do anything else that might cause dissension and discord among other sodalities established in the same city, town, or country, or place. The entire purpose of these congregations is the exercise of Christian virtues and piety under the protection of the Blessed Virgin.

[*Latin ed. p. 33*]

OF THE SOCIETY OF JESUS. 33 From this, considering the nature of the Congregation, since instructions in the catechism and other works of piety cannot be carried out for children who are studying grammar, and for young men who are engaged in the study of philosophy or theology; therefore, from the very beginning, in the Roman College itself, two other dis-

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tinct Congregations were established, according to the different ages of the children, and members were gathered into them. Furthermore, since the Holy See has granted the faculty of incorporating other sodalities, which are composed of people of different and distinct conditions, including girls who are being educated in convents or monasteries, or in religious schools, and other women who may, with the permission of the Ordinary, come together in a chapel or church, and carry out at least some of the prescribed works; provision must be made in this manner both in Rome and in other places. Moreover, such Congregations have already been established in countless numbers, and are found in every part of the world, and they are increasing. However, the purpose of the Prima-Primaria would have been undermined if it had been included under the Clementine Constitution, which, among other things, establishes that only one confraternity, or sodality, may be erected in any city, land, or place. But, on the contrary, after that Constitution, not only were the Congregations of the Mariana Islands not suppressed, but they were entirely increased, and were confirmed on several occasions by the Holy Fathers: therefore, etc. After these and other discussions and observations, a derogatory clause was added to the Decree of the Sacred Congregation of January 1, 1861: derogating from any Apostolic provision to the contrary, even those of special merit, which would be detrimental to the Prima-Primaria. For, according to what is stated by Fagnanus in Chapter 12, paragraph 49, concerning Privileges, a derogation is made only *against* contrary things; and therefore, it cannot extend to extraneous matters, as has been demonstrated in the case of the Congregation under discussion. Indeed, it was added, even if it were supposed that the Prima-Primaria had been included under the Clementine Constitution, and then later excluded by a privilege, it would not seem to be included under that simple derogatory clause, without any mention being made of this sodality. And indeed, the words are very serious, with which Pope Benedict XIV. concludes the aforementioned golden Bull, *Gloriosae Dominae*, in which other previous Constitutions concerning the Prima-Primaria are included, Acts, Vol. II, Part I, p. 3.

[*Latin ed. p. 34*]

34 OF THE SOCIETY OF JESUS. Namely: "These present letters must never, at any time, be invalidated by reason of fraud, or deceit, or nullity, or by any defect in our intention, or by any other defect, nor can they be impugned, or retracted, or revoked in any way; but they must always and forever remain valid and effective, and must produce, or obtain, their full and complete effects, nor must they be comprehended under any similar or dissimilar invocations, suspensions, limitations, derogations, or other contrary provisions made by Us, or by other Roman Pontiffs, Our Successors, or by the Apostolic See, even with the same full power, knowledge, and authority, at any time; but We decree that they must always be excepted

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from such things, and that whenever they are issued, they must be restored, reinstated, and fully reintegrated to their original state." Wherefore, etc.

RESPONSE IN HONOR OF SAINT ANTHONY.

If you seek miracles,
Death, error, calamity, demons, leprosy flee;
The sick rise up, made whole.
The sea yields, chains break,
Limbs and lost things are sought and received,
By young and old.
Dangers perish,
Necessity ceases;
Let those who feel it tell,
Let the people of Padua say.
PADUANS
The sea yields, chains break,
Limbs and lost things are sought and received,
By young and old.
Glory to the Father, and to the Son,
And to the Holy Spirit.
The sea yields, chains break,
Limbs and lost things are sought and received,
By young and old.
Pray for us,
Saint Anthony.
That we may be made worthy of the promises of Christ.

[*Latin ed. p. 35*]

RESPONSORY IN HONOR OF ST. ANTHONY, PATRON. 83. OREMUS. May the commemoration of your Church, O God, of your Confessor, Blessed Anthony, bring joy, that it may always be strengthened by spiritual aids, and may deserve to enjoy eternal joys. Through Christ our Lord. Amen.

DECREE OF THE CITY AND THE WORLD. From the Audience of the Most Holy [Pope] on January 25, 4866. To the most humble prayers of Father Francis Ludovici Marangoni, General Vicar of the Conventual Order of St. Francis, Our Most Holy Lord, Pope Pius IX, bending with paternal affection, in an audience granted by the Most Eminent Cardinal Prefect on January 25, 1866, has granted to all Christians of both sexes who, at least with a contrite heart, shall devoutly recite the Responsory, beginning with "Si

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quaeris miracula," together with the verse and the prayer annexed, in honor of St. Anthony of Padua, a hundred days of indulgence for each recitation. But to those Christians who shall offer the aforementioned prayers daily, at least once, throughout the entire month, a plenary indulgence is granted, on any day of the month chosen by each individual, provided that, truly penitent, they have confessed their sins and received Holy Communion, and have devoutly visited some church or public oratory, and there, for a time, have prayed according to the will of His Holiness. This decree is valid for the present and for all time to come, without any specified period. Notwithstanding any contrary provisions. Given in Rome, from the Secretariat of the Holy Congregation for Indulgences, on January 25, 1866.

Father Anthony M. Card. Panebianco, Prefect.

Sign. A. Colombo, Secretary.

[*Latin ed. p. 36*]

36 FROM THE SACRED CONGREGATION FOR RITES, REGARDING THE BEATIFICATION AND CANONIZATION OF THE SERVANT OF GOD, FATHER GENEROSUS MARIAE OF PREMOSELLO, PRIEST, PROFESSOR OF THE ORDER OF MINORITES OF THE OBSERVANCE, OF THE SERAPHIC PROVINCE, CONCERNING THE INTRODUCTION OF THE CAUSE. A summary of the life of the Servant of God (1). In the town of Novara, within the Diocese of Novara, which is called Premosello, he was born on August 24, 1729, to parents of humble origins, but distinguished by great honesty and Christian piety, to whom the name Bartholomew was given, taken from the vigil of this Apostle on whose day he was born. From his childhood, having been instructed in Christian education, he gave clear signs of the perfection to which he was destined. For even as a boy, although endowed with a lively intellect, he seemed to love solitude and a secluded life, and he was often found in his parish church, where he offered his assistance in sacred duties and other tasks related to divine worship. When his parents recognized the character of his soul and the desire he had to pursue a military life in the Church, they spared no effort to provide the Servant of God with the necessary education, so that he might achieve the goal he desired. It is also reported that, as a young man, devoted to his studies and pious exercises, he consistently avoided the customs, or idle company, or gatherings of his peers, so that it can truly be said that he knew no other places than his own home and the school (1). This decree concerning the cause was presented in Volume I, page 652.

[*Latin ed. p. 37*]

The Blessed and Venerable Servant of God, Father Francis Generosi, from Premosello, was, at the age of 37, a man who appeared diligent in the church, attending to prayer, serving at the sacred functions, attending the sacraments, and participating in other pious activities. If anyone were

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to reproach him for such a solitary way of life, he would readily respond, stating that, having a mind intent on a religious state, he considered it fitting to accustom himself to the solitude appropriate to that state, and to practice it. Having reached the age of twenty, he felt that the time had come to enter the religious life he desired. After fervent prayers to God, after receiving counsel, and after making all necessary preparations, he arrived at the Assisi monastery of the Order of the Seraphim in the middle of the summer of the year 1750, and, more with tears than with words, he requested to be admitted to the Minorite life in that monastery; and, according to his wishes, it was so; indeed, he obtained entry on March 3rd of that same year, and on June 5th of the following month, he put on the Minorite habit, and, having changed his baptismal name Bartholomew to Francis, he was received among the clerical candidates of the Order for his novitiate. After completing his year of novitiate, on June 6th, 1751, he pronounced his religious vows before God, and he was sent to the monastery of Saint Francis in Perugia to study the sacred sciences, and there, in the year 1753, he received the sacred orders from the Bishop. In the year 1756, at the command of his Superiors, he departed for Milan, where he completed a full year of studies in theology at the monastery of that city, until the year 1758. There, he was called by God to pursue the path of higher perfection in a particular way. For it happened that, during the night, he saw himself, along with five other brothers, as if having lived their lives, and then, with the same concern, they were led into a large hall, where Christ the Judge was seated on a tribunal. And as soon as the examination began before the brothers, and they were seen to be individually condemned by the same judgment, and dismissed; when it was his turn to stand before the Divine Judge, he was so overwhelmed with terror that he was completely speechless. Having been awakened from his sleep, and going to the choir in the morning, he unexpectedly showed all his religious brothers the entire hair of his head, which had turned white. From this terrible dream, which you can readily compare to those that happened to Saint Teresa, God...

[*Latin ed. p. 38*]

38. We have discovered that this Servant devoted the entire course of his religious life to residing in rural areas of stricter observance. Having completed his studies, he spared no effort to secure a religious assignment in these places; and indeed, he obtained assignments in the Mediolanensi region, in Montefalconensi, and especially in Amerino, where he spent the remainder of his life. He held various offices and dignities within his Order, namely, the teaching of grammar, the office of Vicar of Amerino, the office of Commissary Visitor of the Third Order, and finally, the office of Custos, or Rector, of that same community, to which he always submitted with the utmost obedience, sometimes relinquishing and sometimes ac-

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cepting these positions. Regarding his heroic virtues and singular sanctity, although the Promoter, as is customary, has presented each virtue with distinct articles, it will nevertheless be appropriate to briefly mention a few things here. Furthermore, the witnesses testify that the Servant of God, throughout his religious life, strove for nothing other than the most perfect and complete observance of the angelic rule and the Constitutions. They attest to his singular constancy in vocal and mental prayer, his composure of demeanor, the stability of his mind, and the appearance of ecstasy, in which the most prominent signs of his intimate fervor appeared, along with a remarkable brightness in his countenance. Moreover, the witnesses testify that he rigorously restrained all appetites of the senses, and that he constantly afflicted his body with vigils, with the cilice, with scourges, and with other instruments of penance. Throughout the entire thirty-six years that he lived in Amerino, he diligently labored to reconcile penitents with God through sacramental confession, and to instruct children and townspeople in the precepts of the faith; he visited the city of Amerina, although it was three leagues distant, for this very purpose, almost every week; he traversed the surrounding fields, villages, or towns, in order to seek out sinners whom he might reconcile with God through the same Sacrament; he would set out at any hour, immediately, to any place, regardless of the difficulty of the journey or the severity of the weather, and he was sometimes seen to rise from his bed, even when ill, and to go on foot to a sick penitent, and, by a marvelous miracle, to return healed from his own infirmity.

[*Latin ed. p. 39*]

FATHER FRANCIS, a man of great generosity, from Premosello, aged 39. He never neglected to speak to the people of the town about moral matters, about the mysteries of the faith, and about divine commandments. If he encountered peasants while walking, he would gently join them, and he would skillfully turn their minds towards receiving spiritual instruction. In the same way, if he found wandering children, he would kindly call them to him, and he would entice them with small gifts to understand and remember the special teachings of the Christian faith. He never refused any opportunity, whether to speak for the purpose of instruction, or to encourage spiritual exercises. Always vigilant and eager to help everyone, he would correct faults; he would try to win over those addicted to vice and involved in wickedness, and he would not abandon them until he understood that they had attained true reform; he would hasten to comfort those whose minds were troubled; and as a blessed peacemaker, he would extinguish anger, dispel hatred, and restrain vengeance; he would immediately visit those who were distressed, and he would cheerfully console each one with appropriate words. Always moved by the hunger of the poor, and although in his own humble condition he did not have enough to provide

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for all their needs, he would call upon the wealthy to help them; and in one year of great hardship, he did not hesitate to personally go to the towns and villages of neighboring dioceses to collect bread, vegetables, and grains, so that he might be able to satisfy the hungry. And finally, as if he were the father of all, he received everyone with charity, and he never seemed to want to offend anyone. This singular sanctity of Father Generosi was itself illuminated by God with gifts and miracles. While he was praying or singing with angelic fervor, his face would be seen to glow. Sometimes, while celebrating the Holy Mass, and sometimes while leading prayers within the church, he was publicly seen to be lifted into the air with his whole body. To these things were added special gifts of discernment of spirits, and the knowledge of hidden things, by which he would often reveal hidden thoughts, sins omitted in confession, events that had occurred far away, and sometimes the state of the dead in the afterlife, as all things were made known to him in their own true ways. Endowed with the gift of prophecy, he foretold...

[*Latin ed. p. 40*]

40. Concerning the events leading to beatification and canonization, public and private calamities, the brief or prolonged duration of life in some cases, the sudden and unexpected death in others, the fortunate or fatal outcomes of illnesses, as all these were confirmed by facts. The Servant of God possessed the power to cast out demons and to disperse stormy winds and clouds. It is pleasing to hear from rural witnesses how easily he would drive away mice, weasels, and other harmful creatures from their homes, from the fields, from the harvests, and from stored grain. But also, numerous witnesses testified to supernatural events in which he frequently manifested himself. Indeed, sometimes, through a blessing and the laying on of his hands, or even through the use of objects which he himself used to perform these miracles, mute children, or even those who were already dying and had lost their voice, regained the ability to speak; sometimes, the infirm were able to walk, freely moving about; and if I were to recount all that the witnesses testified under oath, even material things were sometimes changed from their natural state, or increased in quantity, or multiplied, or, where they were completely absent, miraculously appeared; indeed, barren lands, which he had blessed, were seen to acquire fertility, and in the construction of a building, beams suddenly extended themselves, perfectly suited for the purpose; and, omitting other things, it happened not once that, in the complete absence of food for a religious community, abundant provisions appeared immediately after his prayer; and we also have it testified that, when all bread was completely lacking for the community's table, stones blessed by the same Servant of God were promptly transformed into the best of breads.

(1) We must not omit here what Witness 42 testified concerning certain

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predictions that perhaps referred to the present time: "I remember that during the time of the French Republic, when he saw the evils that afflicted the Holy Church, he showed the greatest bitterness, and foreseeing future evils, even with regard to his Order and Convent, he said: 'VERB! SUCH A BAD TIME WILL COME IN WHICH I WOULD NOT EVEN WANT MY SHOES TO BE LEFT ON THE GROUND.'" These words, translated into Latin, sound like this: "It also came to his mind, that when, during the times of the French Republic, he foresaw the evils that afflicted the Holy Church of God, he felt the greatest anguish; and when he foresaw future evils, even those that concerned his Order and Convent, he said: 'Such will be the future times, that not even my sandals will remain upon the earth.'"

[*Latin ed. p. 41*]

THE SERVANTS OF GOD, FATHER FRANCIS GENEROSI, M.A., FROM PREMOSELLO. Full of merits, renowned for his sanctity and for miracles in the diocese of Armerina, having reached the seventieth year of his age, and having patiently endured for thirty-six years in Amerino a grievous illness of dropsy, he passed from this life on June 7, 1804. All of these things were gathered from the testimonies of witnesses, with which the same summary of his life was enriched in a more copious manner, and which were carefully compiled by the Reverend Procurator (1), who, having used the same witnesses, numbering one hundred and thirty-five, then, as is customary, proceeded to describe individually the heroic virtues of the Servant of God, whether theological or cardinal, and his reputation for sanctity, both during his life and after his death. After these matters had been thoroughly investigated, and after they had been transmitted, along with the authentic proceedings, to the Promoter of the Faith, a written discussion began between them, of which we shall indicate only some aspects in the following concise account.

A SYNOPTIC ACCOUNT.

OBSERVATIONS OF THE REVEREND FATHER PROMOTER OF THE FAITH.

— After a brief exposition of the life of the Servant of God, the Censor wrote, among other things: "The things accomplished by him (the Servant of God), both during his early years and during the time when he devoted himself to studies, are entirely unknown. The only thing that has come to his memory is that he saw Christ, the Judge, appear to him with a threatening countenance; as a result, he was so struck with fear that he immediately fainted." Afterwards, desiring a more hidden and stricter life, conscious of himself, he decided to live only in the mountains, and among better men.

— The Censor then proceeded to the first point of his observations,

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which concerns the proceedings held in Ameria. He observed that these proceedings, which are carried out by the authority of the Ordinary, although they do not require all that is prescribed for Apostolic processes, nevertheless, it is absolutely necessary that those things which must be observed according to common law be observed in the construction of other processes, as Benedict XIV states in his work on Canonization, I, 2, chapter 43, number 2.

— Furthermore, it is established by common law that Ordinaries exercise jurisdiction only over their subjects, and that the forms of judgment must be observed no less than in the actual forum of contention. Therefore, the Ordinaries of the places, or those delegated by them, (f) the Advocate Philip Carlini, undertook the office of Procurator in this cause.

[*Latin ed. p. 42*]

42. CONCERNING BEATIFICATION AND CANONIZATION within their own dioceses, to summon witnesses to their tribunal, and to legitimately ascertain the truth from them, the Ordinary is the judge (thus Benedict XIV). He exercises jurisdiction according to his office, and therefore according to his right, as the text states: "The Ordinary is the Bishop in his own diocese..." The Ordinary, moreover, is not only he within whose diocese the body to be canonized is located, but also he within whose diocese the miracles occurred, or in whose diocese reside the individuals who are to be examined concerning the holiness and miracles. L. 2 c. 2 n. 1. Furthermore, (the Censor added), the judges delegated by the Bishop of Ameria do not appear to have had this authority. For these individuals conducted investigations not only in Ameria, but also in Hortae, Interamna, Assisi, and Fulginia, and they examined witnesses; these cities, undoubtedly, fall under the jurisdiction of their own Bishop, and not of the Bishop of Ameria. If, therefore, a lack of jurisdiction renders a legal action invalid, not only in criminal cases, but also in civil cases, it must be said that this is especially true in judgments of this most serious nature, from which, indeed, not only injustice, but even the suspicion of any kind of fraud should be banished. After such a flawed process, and after noting other deficiencies, which the Censor sought to prevent any response from being given, proceeding to other points, he concluded that the process should be declared invalid. For the sake of brevity, we omit the other observations made with great diligence by the Promoter of the Faith, for his office; and we proceed to the responses given by the Procurator for the Cause.

RESPONSES OF THE PROCURATOR TO THE OBSERVATIONS MADE. Since the Defender of the Faith had described a certain terrifying dream, which the Defender of the Servant of God maintained had been the beginning of greater perfection, therefore the Defender himself, with a lengthy discourse, demonstrated that this was not a new way in which God promotes his servants to greater perfection. Benedict XIV, Z. 3 c. ult.

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n. 1 and c. 5 n. 5. And we also find this written in the sacred scriptures, in Job vii. 12: "You will terrify me with dreams, and with visions you will trouble me." And again, in Job xxxiii. 15: "By a dream, in a vision of the night, when a deep sleep falls on men, and they see visions of the night, then He opens the ear of men, and seals their instruction."

[*Latin ed. p. 43*]

SERVI DEI, REVEREND FATHER GENEROSI, M.A., FROM PREMOSELLO. 43 And, omitting many other examples which are read in the histories of the Servants of God, the Defender of the Virgin of Ávila, Saint Teresa, presented a similar, terrible vision. We read in her life, written by herself, chapter 32, page 181: "When I was once praying, and although I did not know how it happened, I saw myself placed in Hell. I felt that the Lord wanted me to look at the place that the demons had prepared for me, and for which I had deserved it through my sins. This happened in a very short space of time. But although I have lived longer, I do not seem to be able to forget it." And further down, on page 184, it is written: "When the Lord, through this terrible and wondrous vision, showed me the place that was prepared for me in Hell, if I had continued on the path that I had previously taken, I constantly sought the manner, the reason, and the means of making amends... I thought of desolate places, where I would flee from men and completely separate myself from the world. My spirit was not at rest; although this disturbance was not turbulent, but rather a sweet taste. There, I clearly perceived that God was present, who 'warmed my soul with a heat that made the food I ate more substantial than what I had eaten before.' I often thought about what I could do for God, and it came to my mind that I should follow the calling of the Divine Majesty to this religious Society, and strive to observe its rules with the greatest possible perfection." Therefore, the Orator, in his extensive discussion, appropriately observed the similarity of the effects in the manner of living, which arose from this wondrous vision of the Virgin of Ávila, with those which were derived from the vision of the Servant of God through a dream; and he noted that, despite the terrible vision of Saint Teresa, the same Virgin of Ávila, in the Relatio of her Cause, number 7, and in the Bull of Gregory XV for her canonization, was solemnly declared to have been, throughout her entire life, free from all mortal sin. Indeed, Urban VIII "later had it, so that in making the necessary corrections for her Office, he considered it necessary to confirm this again with these memorable words, which are read in Philippus Lopez, in chapter without number, of the Life of Saint Teresa: 'Saint Teresa never committed a mortal sin. Therefore, it does not seem fitting that those things which she herself attributed to her humility should become an occasion for suspecting that she had been accused of grave sins.'" Therefore, the Defender concluded that the suspicion that was introduced by the Fidei Vindex, on the occasion of the

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acceptance...

[*Latin ed. p. 44*]

44. In the matter of beatification and canonization at Sonnino, against the backdrop of the Servant of God's prior life, any objection must be rejected; indeed, it should be considered a terrifying dream sent by divine providence, so that his memory might more readily respond to his vocation. Furthermore, so that he might be bound to God with a stronger bond of love, as subsequently transpired. To repel the objection raised by the Defender of the Faith based on the lack of proper jurisdiction, the procurator for the cause, among other things, recalled what was taught by the Most Holy Tribunal in Decree 748, paragraph 1 and following, paragraph 18, namely: "A bishop exercises his jurisdiction in another diocese only if he has the consent of the diocesan and of the parties involved." Therefore, if the consent of the bishop and the acceptance of the parties involved in the matter are obtained in another diocese, the bishop can lawfully and validly exercise his jurisdiction even outside the boundaries of his own diocese. These statements apply if we are dealing with contentious jurisdiction, which involves a judicial process; they do not apply if we are dealing with voluntary jurisdiction, which is exercised without a formal judicial process and does not require the consent of the local bishop, as Reiffen, volume f, title 20, number 9, states. Furthermore, the procedural acts of which we are speaking appear to pertain more to voluntary jurisdiction, carried out without a formal judicial process, than to contentious jurisdiction. However, even if we assume, for the sake of argument, that we are dealing with contentious jurisdiction in the strictest sense, the proper exercise of that jurisdiction in another territory is sufficient with the tacit consent of the bishop, as Ferraris, Bibliotheca Verborum, number 5, states: "Contentious jurisdiction... cannot be exercised outside the territory without the express or tacit consent of the judge of that place and of the parties involved in the dispute." This is confirmed by Reiffen, in the aforementioned passage, and by others in common. Furthermore, the Defender of the Faith argued that in the present case, it could not be asserted that such tacit consent from the Ordinary had been obtained; and that, since they could have prevented it, their silence was considered to be consent. (Regni, 43, 6). However, these statements appear to have been made rather abundantly, since it is said that express permission or license from the Ordinaries in the respective dioceses had been obtained from the Tabellione, if the Tabellione's testimony is to be believed. However, the lack of such a license might perhaps be considered a lack of urbanity in the cases we are discussing, but never the nullity of the process, since it is not a matter of issuing a judgment between the parties involved; but rather of gathering evidence in accordance with

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the encyclical letter of March 12, 1631.

[*Latin ed. p. 45*]

TO THE SERVANTS OF GOD, FATHER FRANCIS GENEROSI, M.A., FROM PREMOSELLO, 45, as reported by Benedict XIV, book 2, chapter 4, section 3; in which, not the least mention is made of that caution which Censor argued had been overlooked in the present cause. These and other matters, extensively debated by the Defender, are to be considered in resolving the doubt. "Whether the commission for the introduction of this cause should be signed, and in what manner, in the case and for the purpose in question."

RESOLUTION. — The Holy Congregation, after mature examination of all matters, and having also heard the voice of the Reverend Father, Doctor Peter Minetti, Promoter of the Holy Office, decreed on April 28, 1866: affirmatively, that is, the commission should be signed, if it pleases the Most Holy [Father].

Afterwards, having been informed of the foregoing by the Most Holy Lord Pope Pius IX, the judgment of the Holy Congregation was ratified and confirmed, and the Most Holy Father signed the commission for the introduction of the cause of the Venerable Servant of God, on May 3, 1866.

FROM THE HOLY CONGREGATION FOR ECCLESIASTICAL IMMUNITY.

August 9, 1842. Although the illustrious office of this Holy Congregation seems to be resting in comparison to previous centuries, since the causes that reach it are mostly from the Pontifical jurisdiction; nevertheless, it will not be inappropriate for those who are engaged in understanding the law of the Church, if we present some acts of this Holy Congregation, which at least illustrate its discipline (1).

(1) The exemption of persons and sacred things from secular power belongs to the Church of Christ the Lord, by reason of the nature of that Church and its dignity. For if the Church...

[*Latin ed. p. 46*]

46. EXTRACTION. Concerning the matter. Titius, who belonged to the jurisdiction of the Church, was unable to pay his debts to his creditors, and was therefore seized by soldiers according to the law, and was being led to prison with his hands bound. However, it happened that, although he was bound, he suddenly escaped from the soldiers who were pursuing him, tearing his clothes in the process. In order to ensure his safety, and to free himself from the pursuing soldiers, he ran towards the outer wall of the church.

Society is perfect, and far more noble than civil society, because of the

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highest purpose assigned to it by the Author of the Church, and because of the divine institution itself, and because of the means by which the society is governed and directed towards its purpose, so that it differs from civil society only as much as something above nature differs from any natural work; therefore, ecclesiastical persons and sacred things ought to be immune from the power of civil rulers. And because of the very dignity of the Church, this immunity or exemption is found not only in the degree in which one civil society is exempted from another society of the same kind; but in a far more perfect degree, so that those who seek to exercise power over these persons and things not only violate the order of justice, but commit sacrilege. Those are greatly mistaken who believe that the rights of such an exemption belong to the Church by special concessions granted by Christian rulers; for they seem to completely ignore what the Church of our Lord Christ is. It must be admitted that Christian rulers, having restored peace to the Church, have remembered their duty and have recognized the dignity of the Church, and have confirmed it with their laws, as Nicephorus writes about Constantine the Great in his history of the Church, book 7, chapter 46, namely that Constantine the Great, by a decree, made all clergy immune and free, and ordered that jurisdiction and judgment over them should be given to the bishops, if they wished to decline the judgment of civil judges. Whether Christian rulers have given anything to the Church with these concessions that does not properly belong to the Church itself. And the Church itself constantly demonstrates this in its manner of acting, whether in councils or outside of councils, explaining and clarifying this dignity with many laws, and confirming it with sanctions. Therefore, the Council of Salzburg in 1386, and the Council of Cologne in 1530, declared the immunity of the Church: a very ancient thing, introduced both by divine and human law; and finally, the Council of Trent affirmed the duty of Christian rulers towards ecclesiastical persons, and this immunity, established by God's ordinance and canonical sanctions. On the contrary, although the Church, in times of Christian peace, has fully explained this dignity of its own with laws and sanctions, it should not be surprising if, in many regions disturbed by turmoil and almost reduced to servitude again, the Church remits something of what is due to it, for the good of the faithful, or grants a benevolent tolerance. Therefore, the Roman See, considering the circumstances of places and times, and in order to avoid a greater evil, and to look to the good of the faithful, sometimes enters into agreements with secular rulers, or grants something to them, or entrusts to them the exercise of some of its power. Furthermore, the Roman See has never ceased to defend these rights of immunity, in various ways, according to the circumstances. In ancient times, resolutions of jurisdictional

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controversies were...

[*Latin ed. p. 47*]

EXTRACTION. 47 The servants of St. Francis received him, and, adhering to the wall, proclaimed his right to asylum in the presence of many. But the soldiers, without regard for the immunity of the place, dragged Titian away from there, and, not without the astonishment of those present, led him to the prisons. As the soldiers were proceeding to these prisons, the Pro-official arrived, having learned of the matter. The episcopal court immediately learned of this event, and considered it its duty to order the same soldiers to release Titian from his bonds, and to restore him, in full daylight, to the place from which he had been taken, a place of immunity; which was strictly observed. However, there were no complaints or protests against what the episcopal court had done. The President of the civil government, however, presented his grievances to the Holy See regarding the actions of the same court, citing special provisions by which Pope Pius VII, of blessed memory, had foreseen the vicissitudes of the pontifical jurisdiction; and the court itself inquired whether the soldiers had committed any offenses, and the Pro-official of those same soldiers, who, although subsequently present, seemed at least indirectly to have violated the same immunity by his approval. Therefore, a case was proposed before the Holy See, under the doubts described below.

SYNOPSIS OF THE ARGUMENT.

THESE ARE THE POINTS UPON WHICH THE CIVIL PRESIDENT'S ARGUMENT RESTED. — It was maintained, by official decree, that it was not to be considered ambiguous, according to the prescriptions of the canons and the discipline of ecclesiastical immunity, that those who have escaped from the hands of the soldiers, although already bound by the soldiers, enjoy the right of asylum when they flee to a place of immunity, even if it is not sacred. However, Pope Pius VII, of blessed memory, through various circular letters by the Secretariat of State, and specifically on July 8, 1801, and subsequently, either by audience with the Holy Father, or by special congregations of Cardinals, with prelates appointed by the same Supreme Pontiff, issued decrees. In the records of the Congregation for Immunity, there are several examples collected by Father Francis Angelo Audam of the Order of the Minor Regulars, in the year 1666, who was a secretary of the Holy Congregation. Indeed, examples are found from the year 1340 to the year 1626, at which time a full Congregation for Ecclesiastical Immunity of Cardinals and Most Reverend Prelates was established by Urban VIII, as it still exists to this day. However, during those times, more ecclesiastical immunity issues were either prevented by concordats, or, if any arose, were resolved by the

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Secretariat of State, according to the circumstances.

[*Latin ed. p. 48*]

48. EXTRACTION. On January 12, 1802, and again on January 17, 1818, and by various decrees of the Holy Congregation for the Immunity of Ecclesiastical Places, and especially by the circular letters of the Secretariat of State addressed to the military on January 17, 1818, it was decreed "that he who, having been apprehended by soldiers, escapes from their hands, should be pursued by those same soldiers until he reaches churches, or the doors, atriums, porticoes, and other external areas of churches, monasteries, convents, and other places enjoying immunity; so that those same soldiers may apprehend him without further formality and lead him to prison." Furthermore, the same Pontiff ordered that the soldiers should inform the Ordinary of the place where the extraction took place, and the Cardinal Vicar of Rome, of the matter. Therefore, it was concluded that only those who, fleeing from the hands of the soldiers, take refuge within churches enjoy the privilege of asylum. Consequently, according to this edictal law, it was just that Titus should be seen as having been forcibly removed from the wall of the church, and that the ecclesiastical court could not order that Titus be freely restored to that place of immunity; nor did the soldiers offend against any just laws.

THOSE THINGS PRESENTED IN FAVOR OF THE ECCLESIASTICAL COURT. — On the other hand, in favor of the action taken by the ecclesiastical court, it was observed that the edictal laws had been issued by Pope Pius VII during a time of peace and tranquility, so that Pope Gregory XVI, happily reigning at that time, in his disposition entitled "Regolamento organico," of November 5, 1881, article 602, in the Appendix, seemed to have intended to restore the ecclesiastical laws of immunity to their former state, at least in many respects. Moreover, as the court itself pointed out, the aforementioned letters of Pius VII seemed to refer not to those apprehended for civil reasons, but for criminal reasons. Therefore, with the end of that particular provision, it seemed that common law should prevail, as had already been decided elsewhere by the Holy Congregation: that those who flee to a place of immunity, even if bound with iron chains, should enjoy immunity, and should be restored to that place of immunity. Thus, in Beneventana, on May 6, 1653, it is written: "The Holy Congregation decided that those who pray should enjoy the privilege of ecclesiastical immunity, even if bound with chains and iron, if they flee to a place of immunity." Also, in Ragusa, in the Vicariate General concerning extraction, in which the case of an accused person who had escaped, bound, was being considered.

[*Latin ed. p. 49*]

EXTRACTION. 40. Regarding similar cases involving Birruarians

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brought to the church, the Holy Congregation responded: "It is to be permitted; and it is to be restored to the place of immunity. These are in agreement with the Authors: Riccius, *Verb. Con fughi*, n. 26, 27; Aggevedus, *De Immunitate*, 1 title, 2 law, 2 n. 12; Farinaccius, *De Immunitate*, chapter 15, n. 203; Raynaldus, *Opera posthuma*, volume 1, page 160; Bassani, *Theoriae. Praxis criminalis*, I, 3, chapter 1, nn. 155 and following. Therefore, having considered these points from both sides, the doubts are to be resolved. I. "Whether, in the case of extraction (of Titus) from the outer wall of the church, the immunity of Saint Francis is violated or not." And this is affirmed. II. "Whether censures, and the troubling of both soldiers ('commonly carabinieri') and others who carried out the extraction, as well as the 'pro-official' who, being absent, in some way ratified it, not as if it were done in his own name, but rather passively, namely, by accompanying (Titus) already bound to the prisons," are to be imposed."

RESOLUTION. — The Holy Congregation, having considered the matter on August 9, 1842, decided to respond as follows: To I. Affirmative, and to the Reverend Father, the Secretary, with the Holy Blessing, to inquire about the opinion of the Most Holy [Father] regarding the methods to be observed in similar cases in the future. To II. Affirmative, and to consult their own consciences, at least for caution. In the audience held by the Reverend Father, the Secretary, on August 18th, the Most Holy [Father] approved the aforementioned resolutions, and at the same time declared and ordered that the following be observed: "If it concerns those seized for a criminal cause, or quasi-criminal fugitives, the power of any legitimate executor, and those who pursue them, and who receive them within the external immunity, must observe what was established by the mandate of Pius VII, of blessed memory, on July 5, 1801, January 12, 1802, and January 17, 1818, by the Eminent Secretary of State, and subsequently, in each case, by the Eminent Vicar in the City, and outside the City [Ordinary]."

(1) What is contained in these circular letters is stated above, page 48. Acts, volume H, page XIII, 4.

[*Latin ed. p. 50*]

I. Concerning Extraction: II. If the matter pertains to those who seek refuge in any sanctuary, whether within its sacred or secular boundaries (i), or in a place that is not sacred (2), it must be considered as stipulated in the Apostolic Constitutions, and more recently in Article 602 of the Appendix, and elsewhere in the edictal law of November 5, 1831 (3). III. Regarding those who abuse the right of sanctuary, the provisions already defined in the Encyclicals, which are sent annually to the Ordinaries, must be observed; and especially the Encyclical of July 30, 1831 (4), although I maintain that Pope Pius VIII, of blessed memory, in 1829, decreed that: (1) The canonical distance, or the area limited by small columns, is to be ob-

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served. (2) Places that are immune and sacred, until canonically converted to secular uses, are those that are dedicated to perpetual public worship by rite and special blessing, or are consecrated by the ashes of the faithful. Other pious places, such as hostels, hospitals, seminaries, and monasteries, the Bishop's palace, and those erected or founded by the authority of the Church, are indeed immune and enjoy the privileges of immunity; however, they are not strictly sacred. Sodalities, canonical houses, and the parsonage house attached to the church and inhabited by the parish priest, or even if this parsonage house is not far from the church, are also immune. In monasteries from which Regular clergy were expelled during the French invasion, ecclesiastical immunity has been suspended, although the monasteries retained their former form, but were inhabited by laypeople, or had been converted to secular use; this is according to the decree of Pope Leo XII of April 28, 1824. (3) In Law VIII of this edictal law, commonly known as the Organic Regulation, title II, § 602, it is written: "No one, of whatever condition, can be extracted from a place of immunity, except in cases and forms established by the Holy Canons and Apostolic Constitutions." Furthermore, the manner in which the Ordinaries of the Pontifical jurisdiction should act when dealing with the immunity of places or persons is prescribed. (4) In these Encyclicals sent to the Ordinaries of the Pontifical jurisdiction on July 30, 1831, it is stipulated: I. That Ordinaries of places, without special delegation, may freely use the judicial proceedings taken in sacred and immune places. II. That thieves, and other criminals, who are found in the act of committing a crime in churches and immune places, or for whom it is established that they committed a crime in those places, may be freely removed from there and judged, without the immunity of those places being invoked in their favor. To ensure that the Ordinaries act uniformly in these cases, it is stipulated: III. That if the ecclesiastical court is informed that a criminal has been apprehended in these places, it shall send soldiers, a Notary, and a celibate cleric to apprehend the accused and take possession of the evidence, and then proceed against him as if he had been apprehended in a profane place. IV. That if soldiers are immediately called by the custodian of the church or other soldiers, as often happens, the soldiers may lawfully arrive and detain the accused, but they may not remove them until the court is informed, and proceeds as in n. III. That if those apprehended, as mentioned above, cannot be kept under guard in these places, the soldiers themselves have the power to transfer the accused elsewhere, until they are brought before the ecclesiastical court, which, upon receiving the accused, will send them back to the church to be kept, as prescribed in n. III. These are the things contained in these Encyclicals, written in Italian.

[*Latin ed. p. 51*]

EXTRACTION. 51. Do not, and on May 11, 1889, by order of the Most

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Holy See, issued with the authority of the Secretariate of State for internal affairs, to those who are idle and vagrant, who, for excesses and profanations committed outside, have entered the churches of the City, they can be immediately extracted and taken to the prisons of the government by any legitimate official, without any formality (1).

FROM THE PRECEDING:

I. While the ecclesiastical right of asylum remains firm according to the sacred Canons and Pontifical Constitutions, the Apostolic See, considering the circumstances and local conditions, may, in order to prevent serious damage to public order, temper this right economically.

II. The right of asylum, favoring one fleeing from the hands of soldiers to a place of immunity, does not cease; even though it may seem that the person has already come into the possession of the soldiers. For the sacred right of asylum is most favorable.

III. Therefore, it is the duty of the ecclesiastical judge, whenever he knows that local immunity has been violated, to restore it by means of legal remedies, by returning the person seized to the place of immunity from which he was taken.

IV. Those who violate the right of immunity incur, by that very act, penalties.

V. In the present case, Titus was not deprived of the right of asylum; for the letters mentioned above speak of those seized for criminal reasons, and not of those seized for civil reasons.

(1) Due to the grave profanations committed by the idle and vagrant at Skalitz and at the entrances of the churches of the City, with noise, jokes, and immoral acts, at the request of the Presidents and Superiors of the religious Orders, the Governor of the City obtained from Gregory XVI, blessed memory, that the soldiers of the City could apprehend and extract from said places, and from the entrances of all the churches of the City, without any formality and without the intervention of the Roman Vicariate, all those guilty of said profanations, and to punish them with a summary investigation, etc., by the aforementioned Governor. Pope Pius VIII had already prescribed this for the church of Saint Agnes in the forum, in the year 1829.

[*Latin ed. p. 52*]

32 APPENDIX L CONCERNING THE PETITION FOR THE VALIDATION OF MARRIAGE, THERE WAS NOTHING WHICH, FROM ANY CANONICAL POINT OF VIEW, WAS LACKING, ALTHOUGH IT WAS CELEBRATED WITH A RING, A VEIL, AND WITNESSES. Generally, when it is a question of validating a marriage, arising from a carnal act, it was permitted to petition for a dispensation. However, even if the

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marriage was celebrated according to the rites of Trent, because of some impediment, the Authors teach that, in ancient times (understand, before the Council of Trent), the Sacred Penitentiary used to grant dispensations, so that those who remained in the marriage, contrary to all law, might be absolved. They distinguish between a hidden and a public impediment, and teach that if the impediment is public, it is possible to validate the marriage, once the impediment is removed. And unless it is contracted again before the Parish Priest and witnesses: if, standing by the decree of the Holy Council, they teach that it is possible, with the impediment removed, to validate it by mutual consent. After a long discussion, and after the prescriptions of Trent, it was again concluded that the origin of such a distinction should be made known, so that its value might be estimated. Martin of Navarre, who for so many years devoted himself to the Sacred Penitentiary, wrote shortly after the Council of Trent, in Book 4, Chapter 14, concerning Betrothals, that "in many cases, petitions were presented to the tribunal, in which a dispensation was requested for those who, having contracted marriage, were found to be related by blood; and for these reasons, the presence of the Parish Priest, with two or three witnesses, was deemed necessary; but because this could not always be done, especially in cases of affinity, it was decided that such contracts are declared invalid and null."

[*Latin ed. p. 53*]

IX, I. "Without the greatest danger of scandal," the term "torium" is frequently used. Plu- et, in the Council, it does not seem that consideration was given to such cases. It was said to Cardinal Illilio, Penitentiary, that Pius V. had declared that in hidden cases, the Sacred Penitentiary, by the name of the whole Signature, should expose itself, as His Most Holy Eminence repeated in book 4 of the Council on spiritual marriage, chapter 4, and elsewhere. The same distinction was given to the Holy Congregation of the Council by Pignatellius in volume 8, consultation 2, number 4 and 5. "Therefore, if the matter is public, they must again, with a third denunciation and all other solemnities, contract the marriage, so that it may be done secretly between the spouses, and that the presence of the parish priest or witnesses is not necessary; and thus the clause must be observed: and secretly between themselves they must contract."

The same Navarrus, in the Enchiridion sive Manuale Confessariorum de VII. Sacraments, chapter 22, number 70, writes: "But (which must be noted very strongly), the records declare: Pius V. declared that they are not necessary (namely, the parish priest and witnesses) in contracting marriage again by those who contracted it publicly, but because of some hidden impediment, it is null, and when that impediment is removed, it must be contracted anew, as far as it is possible, without the presence of any parish priest or witnesses."

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It seems that a difficulty arises concerning the impediment from the teaching of the Holy Congregation of the Council. Indeed, from the Congregation, such force and fear seemed to be an exception to the general principle of declarations of force and fear. For we have found that the Holy Congregation of the Council has not responded only once, but several times, with a certain absolute reason, without making any distinction between a hidden and a manifest impediment.

[*Latin ed. p. 54*]

APPENDIX F. Concerning marriages entered into under duress and fear: A marriage begun through fear, arising from prolonged cohabitation and numerous acts, must be contracted anew before the parish priest and witnesses. Thus, it is understood that in certain cases, the man claimed that the marriage was not voluntary, but rather induced by fear, as evidenced in Hispalis on June 20, 1609, in book 9, decree 61, page 58, from which it is read: "The Sacred Congregation of Interpreters has repeatedly responded that, even after the Council of Trent, a marriage contracted under fear is not valid unless the fear is removed through cohabitation, and then, with carnal intercourse and other acts, it is not made valid unless it is contracted anew according to the form of the same Council." Furthermore, in Constantinople on December 16, 1634, in book 15, decree 1, page 140, from which it is read: "The Sacred Congregation did not omit to consult the Roman Ritual concerning the Sacrament of Marriage, and the decrees of the Council of Trent concerning the form of marriage must be observed. For, if after the Council of Trent, the observance of the form contained in the decrees of the same Council is required in each parish of the city, it must be so now, not as it was then. In the ratification of a marriage, the acts that were previously invalid are not made valid by the mere fact of the ratification; rather, the ratification of an invalid act is nothing other than a new act: therefore, all the form and solemnity that must be present in the act in order for it to be valid must also be present in the said ratification. Neither a fiction nor a retraction can be of assistance, since these have no place when the act is entirely null. Where the consent of the parties is required at a certain time, as required by the disposition of the Council, namely, at the time when the parish priest is present with witnesses, that consent must be freely given."

Such resolutions, which concern marriages entered into under duress and fear, were also illustrated by the Sacred Rota, as in decision 395, before Louis. Such weighty reasons of the Sacred Rota, if they are valid in other impediments, have the greatest weight. In this case, the Sacred Rota was presented with the question: whether it was established that a marriage

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contracted under duress was valid after the removal of the duress.

[*Latin ed. p. 55*]

It is reported that a case concerning a marriage annulled in the Sacred Roman Rota on December 15, 1589, before Seraphin, was brought up. There, it is stated: "I presented the marriage as valid from now on," but the Most Reverend Fathers and Doctors declared: "We have consulted with His Eminence, Cardinal Carafa, regarding the alleged decision of the Sacred Congregation of the Council concerning impediments to marriage, and it was deemed invalid. Therefore, the marriage contracted under duress and fear was, in fact, freely entered into by both parties at that time, and the aforementioned Lord showed me that it remains invalid due to a lack of form, or because of an impediment. The aforementioned impediment, however, when considered in light of the Council of Trent, which addressed marriages entered into under duress, seems to increase its value, since the Council forbade any marriage to be considered valid in the case of a woman who had been abducted, and prohibited any intercourse between the abductee and the abductor, as long as the woman remained in the power of the abductor, whether she willed it or not. However, this difficulty is resolved if it is observed that all marriages entered into under duress could, in themselves, be validated; and therefore, the Sacred Congregation should have declared the contrary after the Council more frequently. I recall a decree in which it was written: 'It is said to be clandestine.' 'It is almost as if they were not concerned about those things that cannot be brought before the external forum.' These things concern those who, having used all the formalities, contracted marriage according to the decrees of the Sacred Council of Trent, Session 24, Chapter 1, concerning Reforms. The Congregation responded: 'If such an impediment is hidden, and if the parties, after freely consenting to remain in the marriage, seek a dispensation, it is customary for the Pope, through the Penitentiary, to grant a dispensation, even though the marriage is null due to the hidden impediment, so that they may contract marriage anew, without the formalities required by the Council; but if the impediment is manifest, then it is necessary to contract marriage anew, with all the formalities observed in the first marriage. The matter pertains solely to the forum of conscience.' And indeed, the style of the Sacred Penitentiary is such that, when it is a question of a marriage that is manifestly not valid, and the aforementioned impediment is declared, and the Pope, as mentioned above, grants a dispensation, he also adds a clause, provided that the impediments are public; and also, that the Orators may, for some reason, secretly contract marriage anew to avoid scandal."

[*Latin ed. p. 56*]

56 APPENDIX. To be continued. Those who possess this faculty are

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those to whom, according to the principle that even Bishops to whom the delegation for granting dispensations in cases of impediments is entrusted by the Most Holy See, the Council of Trent did not seem to have intended to apply in the aforementioned decree concerning hidden impediments. Sanchez also argues, considering the circumstances, that in certain marriages, even if mention of this faculty is not made in the delegation letters, the impediment may be removed; the case is not included under Matrimonii disp. 37, Tridentini, because under it is understood, by the very reason for which the faculty of granting dispensations is granted, the impediments prescribed by the hidden impediments. And in number 7, he writes: "In the final book 2 on the essence and decree, it is not to be heard that Peter warns of a marriage contracted by force and fear, when this impediment is removed," dub. penult., who says in the third: not of a dispensation, but of a simple true judgment due to the will of the coerced party; the question arises, whether the contracting parties can secretly renew their consent, so that a marriage arises without any Apostolic dispensation. This question seems to be resolved in the opposite way: hence, Pope Pius V. believes that the practice of the Holy See, when in the aforementioned formula it grants to Orators the faculty of secretly contracting anew after a dispensation concerning a hidden impediment, is either a simple declaration of the law, or rather a true dispensation concerning the form of Trent. If this question were to be judged according to the opinion of Navarrus, it would be said to be a simple declaration of the law, and not a dispensation: for, as we mentioned above, Navarrus calls the oracle of St. Pius V. a declaration, and not a dispensation declared by the Council. But it must be said, considering the very decree of the Council, that it is much more likely that it can be celebrated secretly, without a priest and witnesses; thus, Pope Pius V. did not dispense, but declared the Council. This is what Navarrus and Sanchez wrote, and this opinion is generally accepted by the authors cited in Institut. 87, seqq., and by Benedinum. 62.

[*Latin ed. p. 57*]

57 APPENDIX II. DECREE OF THE SACRED CONGREGATION, CONGREGATION FOR INDULGENCES AND SACRED RELICS - JANUARY 8, 1861, IN WHICH THE METHOD TO BE OBSERVED BY THOSE WHO HAVE THE POWER TO AGGREGATE OR FOUND CONFRATERNITIES IS PRESCRIBED.

"For the increase of religion and piety, for the fostering of mutual charity, the Apostolic See has, through various Religious Orders and Regular Institutes, granted the power to found confraternities and congregations. All these matters are contained in the aforementioned Constitution, with penalties of nullity, as is clearly evident from the praised Constitution.

"It has, however, been observed that not all have observed the prescribed

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form for founding and instituting, nor for aggregating to themselves, the privileges, indulgences, and other spiritual graces which the Pope had commanded to be communicated.

"Furthermore, it had been established in the same Constitution that, in order that these institutions and aggregations, and the communications made therein, should be entirely free, and that they should only be carried out through a Decree of the Congregation of Cardinals under Paul V, given on March 6, 1608, and under the authority of the Apostolic See, dated December 7, 1601, the Pope prescribed the method to be observed in these matters, and, among other things, established that an indulgence should be granted: privileges, etc., to be communicated only as prescribed in the aforementioned Decree; however, it is known that not all have observed this.

"Therefore, in order to remove all doubt concerning the validity of these institutions or aggregations, the Holy See benignly declares that the aforementioned indulgences and privileges, and all those granted by extension or communication, are valid, and that they are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically and expressly granted to the Society; but not those which are granted by extension or communication, and which are to be communicated in the manner prescribed, under pain of nullity, among other things, which have been specifically

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[*Latin ed. p. 58*]

58. Lions and APPENDIX li. The following are collections, hitherto made and also printed by means of types, in which something concerning Indulgences and Privileges is desired, which must be completed by the Ordinary of the place; whose Decree, as expressed above, is permitted only to serve as a guide, but in the same collections, the concessions of Indulgences must be derived from several Briefs, etc. It was also ordered that, even if, in the future, a formula is to be used in such elections or institutions or collections, notwithstanding the Decree of the Holy Office and the other Decree of the Sacred Congregation of Indulgences, at least the essential prescriptions of Clement VIII, which are explained in the aforementioned day of January 22, 1858, and at least the most important heads in the same formula, must be included with variations approved by the same Holy See, "so that whatever

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is contrary to the Apostolic disposition is also of special memory." The same Holy See ordered that a copy of this formula be communicated to those concerned, and that it be transmitted separately and distinctly from the formula to the Society aggregated by the Order, Institute, or Archiconfraternity.

Given in Rome from the Secretariat of the Sacred Congregation, on this 8th day of January, 1861.

F. Card. Asquini, Prefect. A. Secret.

FORMULAE PRESCRIBED BY THE SACRED CONGREGATION ON JANUARY 8, 1861.

ACCORDING TO THE DECREE. The formula must be observed at least in the essential matters (1) by the Superiors of Religious Orders, etc., in establishing or founding Confraternities and in granting Indulgences and spiritual graces which they have obtained from the Apostolic See.

"N. N. of the Order, General (2)." The religious order, with spiritual graces, privileges, and Indulgences, which it has the faculty of granting, is to be established under the invocation of N.

(1) "It is understood in the essential matters, insofar as it is not forbidden to add or change anything in the same, which does not affect the substance. It will also be proper for each Order, Religious Institute, or Congregation to indicate its origin or nature or excellence, and other things which are usually set forth in such documents."

(2) "Here is expressed the person or those who have authority according to the faculties and privileges of each Order, etc."

[*Latin ed. p. 59*]

APPENDIX II. It has been customary for Confraternities, when it is deemed expedient for the promotion of the salvation of the faithful, to generously offer themselves. We transmit in writing what must be diligently observed (1). Therefore, considering all the Indulgences and spiritual graces described, we hereby decree, with the hope and expectation that the Confraternity itself, which we, as those entrusted with the general care of the entire Order, now establish, will enjoy and possess the blessings of Christ, as Clement VIII, Pope, stated in the Constitution which begins: "Quaecumque data..." and so forth, which was promulgated on December 7, 1604, by which We, with the authority granted to Us by the Most Holy Fathers, prescribed, and the variations approved by the Most Holy Church in the Diocese of N., with the consent of His Eminence, Pope Pius IX, as evidenced by the Decree of the Holy Congregation of Indulgences of January 8, 1861, and in accordance with the principal chapters of the Constitution concerning the establishment of Confraternities, the pious and religious institutions which We have

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recently commended with Letters Patent, provided that another similar Confraternity of the same Institute and kind cannot be established within three miles of the same place, either in secular or regular churches, We erect and establish it, with the consent of the Ordinary, and with the Letters Testimonial of the same. 3. To the Confraternities of both sexes, established or aggregated, We grant and communicate expressly the Indulgences, privileges, and special graces individually described in the List, which must be recognized by the Ordinary of the place, together with these [specifications] (1): "It may also be inserted if desired, but in either case, the List, already recognized by the Ordinary of the place, must contain distinctly and expressly not only the Indulgences and graces of which the Society enjoys directly, but also those of which it enjoys through communication and extension. However, to remove all doubt, when it is said that the List must be recognized by the Ordinary of the place, it is understood that if the List has once been approved by the Ordinary of the place, where the principal authority of the Institute, Religion, etc., resides, which has the power to erect, etc., the List does not require a new recognition, and it can be transmitted to the Society being established, etc., even elsewhere, if it is necessary, so that the same List is always used, with the exception of additions which may be made as a result of new concessions, which must also be recognized." (2) "If desired, the entire Constitution may also be inserted, adding at the end the variations approved by the Most Holy Fathers. However, either the entire Constitution, or at least an indication of those chapters which contain the substance, must be included, together with the aforementioned variations."

[*Latin ed. p. 60*]

CO APPENDIX. 4. That the Statutes of the Confraternity, so that Italy may not exceed the sum of thirty, shall be examined and approved by the Ordinary and by him corrected if necessary. 5. That graces and Indulgences may be granted to the Confraternity. 8. That all the mandates and those expressly stated herein shall be faithfully observed by the Confraternity in all its parts. 6. That the Confraternity shall receive privileges prescribed by the Ordinary. 7. That the erection and aggregation of fraternities and institutions, and communications, shall be entirely and absolutely free of charge, even if offered spontaneously by Superiors and Officials, and that no expenses whatsoever shall be incurred for the acceptance of these, and that they shall be granted only by the Roman authority, and that no expenses for printing, seals, ribbons, wax, parchment, or writing shall be borne by the Confraternity, but rather by the granting authority. "In witness whereof, these Letters shall be made and published by Our Secretary, and sealed with the seal of Our Office. Given, etc." Formula to be observed in substantial Congregations for and from the aggregation of

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Archiconfraternities of Confraternities. "To Our beloved brothers in Christ, the Society N. in the Church N., canonically erected. Greetings in the Lord forever. "We, who, according to the duty of Our Office, seek to promote the salvation of the faithful and the progress of piety, as Protector, Prior, and Custodes, representing the aforementioned Archiconfraternity of this Institute, add to it other Confraternities and congregations, and to those thus aggregated, We grant, according to the Indulgences of Pope Clement VIII, beginning on the 7th of December, 1604."

[*Latin ed. p. 61*]

IX. Regarding the aggregations and the heavenly treasures of the Church, Pope Pius IX, having approved, together with the variations approved by the Most Holy Father, Pope Pius IX, through a Decree of the Sacred Congregation of Indulgences, dated January 8, 1861, has issued these Letters, driven by a zealous love for God and for the Christian religion, concerning the aforementioned Fraternity, as follows:

1. That only a Fraternity of that kind, of the same institution and genus, may be established in both secular and regular churches.

2. That this be done with the consent of the Ordinary, and with the aforementioned testimonials.

3. That to the canonically erected Fraternity, whether newly established or aggregated, the privileges and indulgences expressly and specifically granted to the Arch-Fraternity (provided that a similar grace has not previously been granted to another in the aforementioned communication, N.) be communicated to the Arch-Fraternity, named specifically, by us.

4. That the statutes of such Fraternities, to be aggregated to another Arch-Fraternity, be examined and approved by the Ordinary of the place, and that, according to the Apostolic faculty granted to us, we add and decree, and that to that Fraternity and its members, the Indulgences and spiritual graces of our Arch-Fraternity be granted, as determined by the Ordinary.

5. That the Fraternity may receive and dispense alms, as expressly and precisely granted, according to the form communicated by the Ordinary.

6. That the Fraternity may be communicated by Pontifical Letters.

7. That the Letters of erection, according to the tenor of the description contained in the aforementioned list, which has been duly examined by the Ordinary of the place, together with these Letters, are delivered simultaneously (1).

With regard to all the indulgences and spiritual graces, they must be granted and dispensed, and only for the expenses of parchment, the cost of writing or printing, the expenses of seals, ribbons, wax, the labor of the Secretary and Notary, or any other similar expense, so that the aforementioned Fraternity may, according to what is written in the aforementioned Constitution by His Holiness Clement VIII, and the variations made by the

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Most Holy Father, enjoy and benefit from these things, not exceeding the sum indicated.

[*Latin ed. p. 62*]

APPENDIX II. C2. Six Roman coins are sufficient to obtain the penalty in Italy, and outside of Italy, the sum shall not exceed that which can be remitted by any other than a Roman judge. Thirty livres for each, or for each institution or common aggregation, "in which all and each may receive confirmation and testimony." 8. That all the mandates of Our Archiconfraternity, here enumerated and expressed, may be faithfully observed by the institutions or aggregations, We command that they be subscribed and published by Our Secretary, and that the documents, privileges, and indulgences of the same be provided with the seals of the aforementioned institution and of the Archiconfraternity, so that they may have full force and validity, and that no Superior or Official, by any deprivation of office, shall diminish the validity of these, or any others hereafter.

"Given at Rome, from the usual place of Our Congregation, in the present year of Our Pontificate, on the third day of the month."

APPENDIX III. CONCERNING THE NEXT APOSTOLIC PENITENTIARY, REGARDING DISPENSATIONS FOR MARRIAGES IN THE EXTERNAL FORUM.

That supplications to the Holy Penitentiary may not be made in vain; for obtaining dispensations for marriages, even in the external forum: or, that they may be obtained more quickly than is possible, We declare the following, which are the Apostolic Decrees.

That the proper function of the Holy Penitentiary Office is, as We have noted before, Vol. I, p. 382, to provide its Ordinaries with the means to exercise their faculties, yet it looks to extraordinary faculties, which are implored from the Supreme Pontiff in the usual audience which the Cardinal Penitentiary holds each week.

It is necessary that the Ordinaries, reporting the poor, should provide testimonies of their poverty.

However, extraordinary and urgent cases may arise in which the Ordinaries...

In such cases, it is necessary that the Ordinary...

[*Latin ed. p. 63*]

CHAPTER IX. Concerning the condition for making a petition, and the opportune time in the place where the parties were born, and also concerning the transfer of the petition from one place to another, so that it may be evident how much distress those whose names are mentioned can cause to others, and how Orators can help them, so that the rights of the Apostolic See may be maintained, and so that all of this may be found in the archives,

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which is settled in the Office of the Penitentiary. The condition to which one can be married: "For a woman who is not endowed: that is, a woman who does not have a dowry, and a man who wishes to marry her, must concur in the following causes: namely, those causes which, according to the law, are sufficient and legitimate, and which pertain to the quality of the woman, according to the impediment and the degree of kinship." However, the Decree is added: "And after the woman has been completely endowed, the authors usually speak extensively about these matters, but we do not wish to omit a certain series of cases, which Pope Benedict XIV, in the Fifth Volume, on the 26th of September, 1754, in a response to questions proposed by the Archbishop of Tours in France, briefly indicated; and these cases, which are praised by the aforementioned Pope, are as follows: 1. "Because of a connection that occurred after the marriage, between the spouses." 2. "Because of infamy, namely, if the parties had intercourse between themselves before the marriage, which is entirely contrary to the intention of marriage, and although they did not intend to marry each other, nevertheless, suspicion arises, although they are composed of each other, therefore, for these reasons, which have arisen, and it is certain that if a man and a woman have intercourse with each other, it is a grave impediment, and for this reason, the words are used: 'For the sake of peace.' The cause is explained in this way: 'When, between a man and a woman, or between the parents, relatives, or affines of either, there have been grave animosities, or if animosities have arisen between them, and it is certain that if a man and a woman have intercourse with each other, it is a grave impediment, and for this reason, the words are used: 'For the sake of peace.' 3. "For a woman who is 24 years of age or older, who has not yet been married, and who has found a man with whom she could be married, but because of the aforementioned causes, which arise before the marriage between the aforementioned man and woman, and although peace has recently been made..."

[*Latin ed. p. 64*]

"These [persons] having been joined, nevertheless, for the desire of a marriage, cohabitate in matrimony, and live under the obedience of the Holy Roman Church, intending to live and to die [thus]."

Concerning these variations, if any should arise, we shall say this: "Because, indeed, although they are not of great importance, grave disputes concerning matters of great importance have arisen between this man and this woman, or their parents, and at the present time, these disputes prevail in their places; nevertheless, it is only for this reason that sufficient causes are found for contracting marriage between them, and before this treatise proceeds, we shall explain. It is certain that if the aforementioned man and woman were to separate from each other, such disputes would entirely cease; therefore, for them, it is sufficient to maintain these disputes for the

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sake of peace, under this express condition: and from this reconciliation or settlement."

9. "Because of heresy. " "Since those who are Orthodox, and who live and intend to live and die under the obedience of the Holy Roman Church, in those parts where many are heretics, it is not possible to investigate the individual circumstances of each [person]; therefore, the Holy Penitentiary grants dispensations, although it is a matter of relaxing impediments from more remote degrees. Hence, those who petition should expose more causes or circumstances which are suitable to move the mind of the Holy Father. But concerning the causes for which the Holy Penitentiary grants dispensations, although they are a matter of relaxing impediments from more remote degrees, it is not possible to investigate the individual circumstances of each [person]. Therefore, if those who petition for the grace of dispensation are truly Orthodox believers, and truly know it, and therefore, in order that it may not happen that they, desiring marriage with heretics, never contract it, a dispensation is granted with the added clause: 'provided that the man and the woman, the aforementioned Orthodox believers, truly request the grace of dispensation for certain reasonable causes, although they do not individually express them; such prayers are sent to the Apostolic Dataria.'"

[*Latin ed. p. 65*]

FROM THE ACTS OF THE CONSISTORY. On the sixth of August, the Most Holy Father, having secretly convened a Consistory in the Apostolic buildings at Vatican, spoke concerning the election made by the Catholic bishops of the Syrian Rite gathered in Aleppo, and proposed and designated the patriarchal church of Antioch. The Syrian bishops, Iulio Philippo Harcus, who was transferred from the see of Amida of the same rite, assumed the name Ignatius Philippus. Then, the same Most Blessed Father proposed and designated the church of Ibareen, in the Republic of Ecuador, which he had previously erected as a cathedral, for the bishop Iosephus Ignatius Checa, Auxiliary Bishop to the Ordinary Anthony Remigius Esteves de Toral of Gonchen, in the same Republic, who was transferred from the episcopal church of Lystra in lands among the infidels. Then, he made known the following elections which had been made after the last Consistory by the Holy Congregation for the Propagation of the Faith, noting those who were appointed and designated: The Apostolic Vicariate of Bosonien in European Turkey, to the Ordinary Paschalis Vuicic, formerly of the Minor Observants of the Order of St. Francis, transferred from the Apostolic Vicariate of Egypt for the Latins, and from the Apostolic Delegation for the Orientals of Egypt and Arabia. The Apostolic Vicariate of Egypt for the Latins, and the Apostolic Delegation for the Orientals of Egypt and Arabia, to the Ordinary Aloysius Ciurcia, formerly of the Minor Observants of the Order of St. Francis, transferred from the see of Scodren in Albania to the

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archiepiscopal church of Irenopolitan in lands among the infidels. Then, the same Roman Pontiff, wishing to follow with a sign of honor the newly elected and confirmed Patriarch of Antioch for the Syrians, so that the request for the sacred Pallium might be made by him, made arrangements accordingly. Therefore, the Ordinary, the Patriarch, was led among the two bishops of the Syrian Rite into the Consistory, where, according to the Acts of the Pontiff, volume II, section XL, [the passage continues, but is truncated in the original text].

[*Latin ed. p. 66*]

66. PAPAL ELECTIONS. Upon approaching the foot of the throne, the sacred Pallium was requested in the Syriac language. To this request, the Pope immediately responded in Latin, saying: "We shall grant it presently." Then, the new Patriarch pronounced the oath, as is customary, and gave thanks to the Pope; all of which was translated into Latin. On the ninth day of the same month, the Most Holy Father, in his sacred dwelling, after the Eucharistic Sacrifice, to which the new Patriarch, along with the coadjutor Bishop Alephen of the Syrians, and Bishop Benni of Mausele, of the Syrians, were present, was seated in the Faldistory, in the middle of the altar, with the Bishop Marinelli of Porphyria standing nearby. The Sacristan, and then Bishop Micaleff of Città di Castello, were also present, along with the Prelate Simeoni of the Sacred Congregation for the Propagation of the Faith, in charge of Eastern rites, and many students of the College of Urban, from various Eastern nations, and others residing in Rome from those regions, all of whom attended this sacred function. The Patriarch of Antioch, adorned in the vestments of his sacred rite, and holding the mitre in his hands, knelt before them, between the two Syrian Bishops. After the Postulation and Oath were renewed in three languages (which were immediately translated into Latin), with the assistance of the Prelate Pellegrini, Auditor of the Roman Rota, and the Camerario of the College of Prelates, reciting the formula, as is customary, by which the fullness of the Patriarchal dignity is expressed, he was clothed with the sacred Pallium.

[*Latin ed. p. 67*]

II. SESSIONS, CONCILIAR PAROCHIAL. June 25, 1864, and January 28, 1865. p. 24. Reform. Compendium of the Case. In a certain town of the diocese of N., there existed a single parish church, serving twenty-four thousand souls, which became vacant on December 31, 1847. The Bishop intended to provide for this parish, not by appointing the titular Archpriest, but by appointing a removable Rector at his discretion, because he considered himself to be the parish priest of the entire diocese. This contradicted the exhibited Bulls of institution of several Archpriests, to whom the parish had been granted as a titular see. However, as years passed and the Bishop did not abandon his intention, the community brought a lawsuit in a sec-

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ular court (which, according to the law, is permissible), according to the custom of that region. And a judgment was rendered in 1858, in which the aforementioned parish was declared to be a true parochial benefice to be conferred. However, in this controversy, another matter was raised, in which the Syndic of the community argued that the parish belonged to the patronage of that community. With the prior controversy resolved, the Syndic ceased his efforts, and sent a notification regarding the other question he had raised. However, the Bishop abstained from appointing a successor for another five years, with one economist and another curate succeeding each other. Finally, in 1859, an edict for the appointment to the parish was published, in which, after setting a fifteen-day term for submitting the required documents, the Bishop reserved the right to set the date of the examination. Meanwhile, the clergy of that place considered that, after the lapse of twelve years, all right of the Bishop had ceased, and that the matter had reverted to the Holy See. However, there was one priest, Titius, who submitted his name to the Curia during this period, and he was the only one subsequently admitted to the appointment, and he presented his approval for the Archpresbyterate. Several things occurred during this time, which seem to obscure...

[*Latin ed. p. 68*]

68. PAROCHIAL. The further course of action for the Bishop. For, despite the lack of concurrence, one priest affirmed that another had appeared before the Bishop, claiming to be worthy of examination, but was rejected. Having heard such approval from the clergy and the people, shouts arose; and thirty presbyters, signing a petition, implored the Bishop to proceed more swiftly, and to inquire, either by himself or through another, before the collation of the parish, into the character and morals of the candidates. Furthermore, another petition of the same nature, bearing the names of many from the same town, was presented. When the Bishop, however, remained unmoved by these appeals, the clergy turned to the Archbishop, who declared that the matter should be referred to the Holy See. Therefore, after prayers were sent to the Holy See, the Sacred Congregation of the Council responded, first to the Bishop, requesting that he report on the reasons for the delay in the collation, the manner in which the concurrence was obtained, as well as on the age, morals, knowledge, and suitability of the candidate; then to the Archbishop, for information and opinion, and to report on the circumstances preceding, accompanying, and following the announced collation of the parish, and especially on the morals, knowledge, and suitability of the priest (Titius) for the care of souls. The Bishop, in reply, hastened to provide a few words, stating that he had conducted everything in accordance with the norms of the sacred canons. Meanwhile, the letters of collation were given to Titius, to the astonishment of all, who was then installed in the possession of the parish benefice. After this, infor-

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mation arrived from the Archbishop; meanwhile, the Bishop died. Subsequently, new letters were received, first from the Archbishop and then from the General Vicar, reporting on the morals of Titius, which were far from commendable, who, although sufficiently instructed in doctrine, did not possess the suitability required for the care of souls, and who, moreover, at that very time, was accused of a serious slander and was said to be the author of false testimonies before the secular tribunals (1). With regard to the concurrence, three particular defects were noted: 1) that in the edict of concurrence, the specific date of the examination was not indicated; nor was it disclosed to the clergy afterward, although the determination of the date of the examination had been promised in the very edict; 2) that (i) these events occurred in regions where suspicion was aroused, and where progress was hindered, in which, although the governments were nominally Catholic, the Holy See seemed to be regarded not as a mother, but as a pretext for the law of the kingdom, and the region followed its own free jurisdiction.

[*Latin ed. p. 69*]

PAROCHIALIS. 69 examinatores pro-synodales constituti sunt, cum assensu Canonicorum eo die in ecclesia cathedrali divinis officiis vacantium, sed qui tamen essent capitulariter congregati: 3. quod in actis concursus duae tantum repertae sunt attestationes oeconomi curati, quibus mores Titii commendabantur. Titius ex mandato S. C. pluries excitatus ut iura sua duceret, is praeter nonnullas litteras in quibus de suae electionis validitate ambigendum non esse aiebat, aliasque non paucas, quibus declarabat contradictionem omnem in ipsum derivare ab aemulatione suorum inimicorum, nihil aliud deduxit. Potissimum vero conquerebatur de Vicario Capitulari cuius adnotabat familiaritatem cum altero ex suis adversariis. His breviter indicatis, sequentem disceptationem referimus super dubiis in calce expositis habitam. Disceptatio synoptica.

DEFENSIO TITII.—Quoniam Titius sese non defendebat, ex officio favore eiusdem sequentia dicebantur. Episcopus non videbatur amisisse ius conferendi paroeciam quamvis longum temporis spatium elapsum fuerit a paroeciae vacatione; namque impeditus eo temporis spatio Episcopus fuit, ob iudicia quae ferenda erant super iure parochialitatis, et patronatus: porro legitime impedito tempora non currunt, ut communiter tradunt Auctores. Quamvis autem quaestioni iuris patronatus nuncium missum fuisse dicatur; attamen ex regali decreto expedienda erat sententia; qua sententia lata Episcopus rite sequiori mense concursus indixit. Vitia insuper concursus, quae adnotata sunt, videbantur respicere formam dumtaxat accidentalem, non vero substantialem. Odium praeterea et aversio populi iniusta comprobabatur: nam si Episcopus aliquid Titii moribus obesse intellexisset post populi reclamationes, certe nec litteras collationis paroeciae expedivisset, neque Titium in beneficii possessionem immitti passus esset.

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Quod si postea Populus et Clerus insurrexit; mirum non esse videbatur, tum quia Titius scandala compescere debet, tum quia Clerus facile invidia movebatur, quod iuvenis ecclesiasticus, qualis erat Titius, dignitatem in propria Cleri ecclesia obtinuisset.

[*Latin ed. p. 70*]

70. PAROCHIAL. DEFENSE OF THE CLERGY.—In order that the clergy might defend its rights, a Defender of the Law was appointed in the City (1), from whose arguments we have extracted certain points. The Defender initially stated that, if one were to consider the form that ought to be observed in such a proceeding, it would be easily perceived that the sacred canons had been violated. For it is prescribed in the Encyclical Letter of Clement X, dated June 10, 1721, that in the Edict by which the clergy is invited to the proceeding, a certain day for the examination must be appended; this determination of the day was not made, although it had been promised. Furthermore, according to the Constitution of Benedict XIV, *Cum illud*, § 16, n. 3, when the day of the proceeding arrives, the required documents must be presented promptly to the Bishop and the Examiners; this was not done. Moreover, the Constitution of St. Pius V states that if, after the time specified in the Edict, the proceeding has not yet been held, and someone, being legitimately hindered, subsequently appears and wishes to be heard, he cannot be rejected. However, another priest appeared who had been rejected because he had not yet undergone the examination, although he had previously been hindered. Finally, the Council of Trent, Session 24, canon 18, concerning the holding of proceedings, states that the proceeding must be held before three synodal examiners, that is, those elected in the synod; but such examiners were not present in the case we are discussing. Although others may be appointed in place of the synodal examiners with the consent of the Chapter, by virtue of the authority granted by the Sacred Congregation, for a period of one year; besides which, there was doubt about this granted authority, and the consent of the Chapter, assembled collegially, was lacking. Finally, the aforementioned Constitution *Cum illud* commands that the Examiners should exercise diligence in the judgment, in examining the qualities suitable for the care of souls, namely, honesty of morals, gravity, prudence, etc. Furthermore, only two Examiners examined the documents of the curate, which attested to the assets of Titus Morihus; however, if they had read them carefully and compared them with the writings of Titus, they would have recognized that both documents had been written by the same Titus. For these testimonies concerning the honesty of Titus's morals had been written by Titus himself, and the curate had signed them under false pretenses. The Defender maintained that all these defects rendered the proceeding null and void; for they did not pertain to an accidental form, but to the substantial form of the proceeding (1). The cause of the clergy

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was defended by the Reverend Father Francis Cerasi, Advocate.

[*Latin ed. p. 71*]

PAROCHIAL. 71 inquired; namely, concerning a form prescribed under a clause that is invalid beforehand. For these words are read in the Constitution cited by St. Pius V., to which other constitutions refer. "Wishing, as far as in us lies, to anticipate future dangers... by the authority of the Apostles, by the tenor of the present document, we declare that all and each appointments, provisions, and institutions of parochial churches made by the same Bishops and Archbishops, and by any other appointing authorities... except and contrary to the form prescribed by the Council of Trent, especially in the examination carried out with the concurrence [of the patron], those made, or to be made in the future, shall be null, invalid, and of no force or effect, and shall not confer any right or title, even in appearance, to possess such parochial churches, and we decree, determine, and declare that such parochial churches, as they were before such appointments, shall now be vacant." Specifically, he observed, in the case of another priest, who, without having obtained the concurrence [of the patron], presented himself before the Bishop and was rejected, such a rejection carries with it the nullity of the appointment, even if the one who was rejected does not object; Ferraris, Bibliotheca Canonica, verb. Concursus, no. 9. The Holy Rota, in the case of Monopoli, in the Theological Disputation of Praebendae, June 25, 1756, before Stadion, S.J., 1 and 8. However, the Defender insisted most strongly on claiming the parochial appointment for the Holy See, due to the right of reservation, or devolution by the lapse of time. For provision must be made for a vacant parochial church within six months from the day of the vacancy, after which time, the appointment is reserved "to the Holy See, as is stated in the aforementioned Constitution of St. Pius V., in which it is read: 'Furthermore, lest parochial churches remain suspended for too long, to the great detriment of souls, we decree that for all parochial churches, of which, as long as they are able, the Bishops... and any other Ordinary appointing authorities, have the power of appointment and provision, if the same Bishops and Ordinaries, within a space of six months from the day of the vacancy thereof, having completed the examination according to the form of the Council of Trent, do not provide... an appointment, provision, institution, and any other disposition, We reserve to Ourselves, and to the Holy See.'" Moreover, in the present case, more than six months, but approximately twelve years, had elapsed, to the great detriment of "divine worship." Nor did the alleged impediment stand in the way; for it is said that "those who are legitimately impeded, time does not run against them."

[*Latin ed. p. 72*]

72. PAROCHIAL. In the present case, such a principle could not apply. For, when the matter concerns the right of devolution, it is known that what

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is established is found in chapter [omitted], in the section "On the right of patronage," and in chapter "When, in the same title," "Why the Sacred Roman Rota, in the Archpresbytery of Senogallien, on March 22, 1761, before Olivario," [§. 11] teaches: "However far the dispute may have progressed, even though it has introduced a method of exercising 'the active right of patronage,' without any interim judgment occurring, until just and legitimate inducements have elapsed, therefore, it could not prevent devolution, nor impose its penalty." For it is one thing when, after a presentation has been made within the prescribed time, a dispute arises between the presented candidates as to which should be preferred; it is another thing when the question arises concerning the right of nomination, whereby one seeks to deprive the other. In the first case, because of the right sought by the presented candidates and by virtue of the office, by which patrons, once appointed, are bound, even if the same presented candidates contend regarding precedence, devolution does not apply. But in the second case, because what is granted for the purpose of presentation is also granted for the purpose of a dispute between patrons, concerning the absolute right of patronage, so that, if the time for nomination is consumed without a nomination being made, it pertains to the Ordinary to safeguard the benefice, and that right of devolution is conferred, so that the vacancy may not remain longer than necessary due to the dispute. Having considered these and other points, the Defender sought to obtain a ruling from the Bishop. Indeed, Titius had been admitted to the possession of the benefice, despite the reclamations of the people and the clergy. The Defender noted that, in the present case, the Bishop could not have invoked what is established, after an appeal had been interposed before the Holy See, as was decided by St. Pius V in the aforementioned Constitution, in which no appeal is granted in a suspensive manner, but in a devolutive manner. There, the Holy Pontiff speaks of that appeal which is made concerning an unreasonable judgment of the Bishop, and a bad report from the Examiners; but in the present case, the question primarily concerned the incompetence of the Bishop to confer the parish, which, due to the lapse of a useful time, fell under the jurisdiction of the Holy See by right of reservation, and by reason of negligence, by right of devolution. Therefore, the appeal was being considered, not only in a devolutive manner, but also in a suspensive manner, which suspends everything, and while it is pending, nothing can be altered. This is also stated in the aforementioned Benedictine Constitution.

[*Latin ed. p. 73*]

PAROCHIAL. 73: It is stated: that, with the exception of a certain case of devolution, which did not pertain to our matter, the Bishop ought to abstain from rendering a more serious judgment, and ought to present the matter to the Dataria for its opinion. Furthermore, several defenders maintained that the Bishop's judgment was so unjust that, although it was

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invalid for the reasons stated, it could nevertheless not be upheld in any way: for in the person of Titus, all those circumstances were present, on account of which a parish priest, rightly instituted, ought to be removed from his benefice; namely, on account of the hatred of the people, even though this may seem unreasonable. With these matters explained with ample learning, the doubts were proposed. I. "Whether the opinion given in this case is valid." And the answer is negative. II. "Whether and how the collation of the parish in favor of (Titus) can be upheld in this case."

RESOLUTION. – The Sacred Congregation of the Council, after discussing the case on June 25, 1864, judged that it should respond: to I and II, the collation is not to be upheld, and the provision pertains to the Holy See. Feeling himself aggrieved by this decision, Titus obtained a new hearing of the case; but he then seemed to abandon the controversy. Therefore, at the request of the Procurator of the Clergy, that the pending litigation might cease, the doubt was again proposed to the Sacred Congregation: "Whether one should adhere to, or recede from, the decisions in this case." To which, on January 28, 1865, the response was: "Adhere to the decisions, and furthermore."

From this, we gather:

I. It is necessary to distinguish between the right of devolution and the right of reservation.

II. The right of devolution was established by the Holy Canons as a punishment for negligence, so that, after the lawful time has elapsed, the collation of a vacant benefice should revert to the person to whom it rightfully belongs.

III. Therefore, such a punishment for negligence does not apply whenever the collator can demonstrate that he was ignorant of the vacancy, or was legitimately hindered. For in such a case, he is not considered negligent.

IV. However, all of these things do not apply to those benefices which, for some canonical reason, remain reserved.

[*Latin ed. p. 74*]

74. PAROCHIAL. To the Holy See. Reservation does not necessarily imply the idea of punishment. V. Parishes, according to the Constitution of St. Pius V, if, after the uselessly expired term of the vacancy, they remain reserved to the Holy See, so that the parish churches may not remain suspended for a long time to the detriment of souls. VI. In the present case, the right of reservation has taken place for multiple reasons. THEOLOGICAL, REGARDING COMPETITION. On December 17, 1864, and February 18, 1865, Sessions 5, chapter I, and Session 24, chapter 18, of the *Compendium* [of Church Law]. In the abbatial church of N., which belongs to no diocese, a theological competition was held, vacant as to the theological prebend,

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according to the prescription of the Constitution of Benedict XIII, which begins: "Pastoralis officii." Two competitors were present, namely, the priests Lawrence and Anthony. Due to the urgency of the matter, and after examining the merits of both, both were approved by the Examiners; however, it so happened that, after the Examiners conferred, assigning six points to each, Lawrence surpassed Anthony by one and a half points. Therefore, the Ordinary Abbot, having received the report from the Examiners, appointed Lawrence to the theological prebend. Anthony, upon receiving this news, protested, and indeed, it seems that he appealed, although a legitimate question arose regarding the appeal; however, we are not concerned with this matter in the present case. Therefore, in response to Anthony's protests, a case was brought before the Congregation of the Holy See under the question: "Whether it can be proven that the Examiners gave a bad report, and that the Ordinary made an unreasonable judgment in this case." After the proceedings were held according to the mandate of the Holy Congregation, and with all other customary procedures observed, the Holy Congregation...

[*Latin ed. p. 75*]

THEOLOGICAL, REGARDING COMPETENCE. 75. It is fitting that two judicial examiners should express their judgment concerning this competition, and regarding the qualifications of each candidate. And one of the appointed examiners concluded that, in favor of Anthony, the judgment of the pre-synodal examiners should be revised, not regarding the aspect of knowledge, but regarding the aspect of qualifications. The other appointed examiner, however, confirmed the judgment of both the pre-synodal examiners and the judgment of the Ordinary. SYNOPTIC DISCUSSION. DEFENSE OF ANTHONY. — Anthony, in favor of his own position in the second case, appointed a Defender in the City, who, among other things, through a lengthy oration, requested a review of the judgment of the examiners appointed by the Sacred Congregation, and simultaneously pointed out the defects and errors that had occurred in the competition of Lawrence, which he declared to be very serious; and he maintained that Lawrence himself had been completely defeated by Anthony. For, if one considers knowledge, Anthony excels by reason of the elegance of his speech, the clarity of his logic, his theological and scriptural instruction, and the abundance of material, as the Defender himself endeavored to demonstrate. And if one were to speak of qualifications, Anthony strove even more to demonstrate that he had far surpassed Lawrence. It is well known what Benedict XIV established in the Constitution *Cum Illud*, § 16, number 4; namely, he established that: "Examiners should apply equal, or perhaps greater, skill in examining other qualities consonant with the governance of souls; they should inquire into the honesty of morals, gravity, prudence, the services

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rendered to the Church thus far, the praise acquired in other duties, and other commendable virtues, which must be joined with a firm bond of doctrine; and, having considered all these things together, they shall reject those who are unsuitable by their votes, and shall present suitable candidates to the Bishop." Among the many merits with which Anthony was endowed, it was noted that he was a former Censor of the Theological Academy in the city, which had been increased by numerous favors from the Holy Pontiffs. And specifically, Benedict XIII, in his Letters in the form of a Brief of May 6, 1726, among other things, established: "Following the footsteps of our predecessor Clement, we also require all and each of those who are appointed to benefices, similarly..."

[*Latin ed. p. 76*]

76. REGARDING THE THEOLOGICAL COMPETITION. Those who have demonstrated themselves to have studied for a longer period in the aforementioned academy with distinction shall be preferred to others in such a competition, all other things being equal. Therefore, the Defender concluded, after considering all matters, both those pertaining to knowledge and those pertaining to other merits, that Anthony so clearly surpassed Lawrence that the latter scarcely seemed worthy of being considered among the approved candidates. However, the strength of the entire defense lay in demonstrating that Anthony was more deserving than Lawrence, so that he could then conclude that the Ordinary could not confer the theological position except upon Anthony. The Defender argued that the Ordinaries are not entitled to the election when conferring a theological position, so that it cannot be conferred upon one who seems more suitable to the Ordinary among the approved candidates, but only upon one who has been legitimately deemed more suitable. To demonstrate this, he instituted an analysis of the Constitution of Benedict XIII, *Pastoralis Officii*, by which Constitution the laws are established by which, under pain of nullity, a prebend, whether theological or penitential, must be conferred. With regard to the theological prebend, the following statutes were established: "We also wish that both this, and all other theological prebends hitherto established and designated, should always be conferred upon a Doctor in Sacred Theology... and otherwise upon the one who, in a formal competition, has been declared more suitable by the examiners, in exactly the same manner as parish churches are conferred. Furthermore, whenever a theological prebend of this kind is to be conferred, by an edict, all those who wish to compete and submit themselves to examination before the Bishop and four examiners actually chosen by the same Bishop shall be called forth... and that one who, in such a competition, has been approved and declared more suitable, shall be conferred the prebend. Whenever the collation of a prebend is to be presented to the Holy See, the Bishop is obliged to transmit to the Roman

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Pontiff, at the time, the proceedings of the competition, so that he himself may assign the vacant prebend to the one whom he judges more worthy and more suitable in the Lord, among the others." Therefore, among other things, the Defender noted that the Bishop does indeed have the right to choose among the approved candidates when it comes to conferring parish churches; but he does not have such a right when it comes to conferring a theological prebend, by virtue of the aforementioned Constitution: for it is expressly written therein that the theological prebend...

[*Latin ed. p. 77*]

THEOLOGICAL, REGARDING COMPETITION. 77 It must always be conferred upon the most suitable candidate, through a formal competition renounced by the Examiners. Therefore, the subject uniquely designated to whom the prebend must be conferred is, namely, the most suitable candidate, renounced by the Examiners. Furthermore, an election cannot take place unless it is between two [candidates]; therefore, any election must be excluded. Especially since the word "election" or "choosing" is never found in that Constitution. On the contrary, in the Tridentine Council and in the Constitution of Benedict XIV, when speaking of the manner of conferring parishes, the words are: "The Bishop shall choose: by election, etc." Therefore, what the Holy Father wished, he expressed; what he did not wish, he did not express. Furthermore, the Defender maintained that any election had been excluded, based on the words which, by way of exception, state that whenever the conferring of a prebend pertains to the Holy See... the Roman Pontiff himself can assign the vacant prebend to him, and confer it upon him, whom he judges more worthy and more suitable in the Lord. Therefore, if this exception, which grants an election, is to be understood, it must be said that the local Ordinaries have been denied the right to elect. To remove the difficulty that these words create – namely, in the very manner in which parish churches are conferred – the Defender sought to show that such words are to be understood only in reference to the manner of conducting the competition; and not to the right of choosing among the approved candidates. He considered that he had sufficiently demonstrated this from the immediately following words: "Furthermore, at the end, by a public edict, they shall be called, etc." Especially since, if the words – namely, "in this very manner" – were understood differently, they could not be reconciled with the preceding sentence, in which it is prescribed that the prebend be conferred upon him who has been judged the most suitable by the Examiners; nor was there room for the repetition of this same sentence, after the manner of conducting the competition had been indicated. Therefore, Benedict XIV, while governing the Church of Bologna, in the Institute No. 9, regarding the theological prebend, prescribed as follows: "II. It is to be noted: that on the 11th day of the next month of May, the same examination must be held in our buildings, to which we ourselves and the

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Examiners, whom we will name, will be present at the hour of 12. Written questions will be proposed; and we wish the answers to be written down, in the Latin language. For the examination for the theological prebend, it is done in the same manner, as for the filling of parish churches." Therefore, the Archbishop at that time...

[*Latin ed. p. 78*]

73. CONCERNING THE COMPETITION. Lambertinius stated the words in precisely that manner, solely in order to establish the competition (1). To remove a serious obstacle, which is the Decree of the Sacred Congregation of Councils in Aversa concerning the theological [position], dated November 21, 1829, in which the following question was discussed: "Does the Bishop have the right to choose, for the granting of the theological and penitentiary [positions], the one whom he himself judges more worthy among those approved in the formal competition; or rather, is he obligated to be choose the one whom the Examiners have declared to be more suitable in that competition?" The answer was: affirmative to the first part, negative to the second. However, some argued that, although this Decree is definitive in the matter under discussion (2). Therefore, the Defender maintained that another Decree was issued, opposing this one, and that Benedict XIV had not stated these words in precisely that manner, solely in order to establish the competition, but also in other respects. Indeed, regarding the establishment of the examination and competition in the aforementioned Constitution, with respect to the election of Examiners, a faculty is granted to Bishops, which belongs to them by common law. On this matter, the same Pontiff wrote in his work on Synods, Dioceses, Book 4, Chapter 7: "The examination, or competition, for parish churches must necessarily be held before at least three Examiners approved by the Synod; otherwise, it is different in the case of those seeking Orders, or who wish to be approved to hear confessions: in this latter case, the Bishop may use any Examiners he wishes, since the Synodical Examiners are required only in competitions for parish churches, and when the matter concerns a restriction limiting the faculty otherwise granted to the Bishop by common law, it should not be extended beyond the expressly stated case: therefore, although Benedict XIII, in his Constitution (Pastoral Office), decreed that theological and penitentiary positions, in Italy and the adjacent islands, should be conferred after a preliminary examination and competition, in precisely the same manner as they are conferred for parish churches; he expressly declared that the competition for those positions need not necessarily be held before Synodical Examiners, but before the Bishop and suitable Examiners, even if they are not Synodical. Therefore, it is not necessary to observe the aforementioned Tridentine Constitution and the most liberal law, which concerns Synodical Examiners, who were established by the Tridentine Council for a special reason, namely, to

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prevent, as much as possible, fraud and special favors, and to ensure that a just judgment is rendered regarding the suitability of those competing for parish positions. From this, it can be sufficiently argued what is the meaning of the aforementioned Constitution, and what is the value of those words in which it is said that the position must always be conferred on the one who has been declared more suitable by the Examiners: namely, that the Bishop must confer the position on the one who is considered more suitable in the examination, without, however, neglecting his own judgment, as happens in the assignment of parish churches. (2) See Appendix XV.

[*Latin ed. p. 79*]

THEOLOGICAL REGARDING COMPETITION. 79. The Sacred Congregation of Councils, in the Canonry of Salerno, on the 1st of September, 1753, issued a decree stating that it should be strictly adhered to, since it was issued at a time when those who could better understand the meaning of the Pastoral Constitution. Therefore, the Advocate argued, since Anthony, with his knowledge and merits, had surpassed Lawrence in the competition, and since the theological position should be conferred upon the one deemed more worthy in the competition, with all other elections being set aside, the judgment of the Ordinary in this case should be considered unreasonable; therefore, the theological position should be conferred upon Anthony.

DEFENSE OF LAWRENCE. — On the contrary, Lawrence's Defender maintained that the report of the Examiners, nor the judgment of the Bishop, was unreasonable. And with regard to the report of the Examiners, it had been approved by the Theologians of the City, who, at the mandate of the Ordinary, reviewed the proceedings of the competition. To avoid tiring the reader, we will omit the details presented in support of the demonstrated expertise of Lawrence in the competition, who was already teaching dogmatic theology in the Seminary; especially since Lawrence's defense was primarily directed towards demonstrating that his opponent should acknowledge, or at least admit, that Lawrence should be considered among the approved candidates. With this conceded, the judgment of the Bishop could not be considered unreasonable. Indeed, it is established by the Council of Trent and the Constitution of Benedict XIV that the Ordinary has the right to choose, among the approved candidates, the one whom he judges to be more suitable in the Lord. And for this reason, the judgment of the Bishop is presumed to be just and equitable, unless it can be refuted by very clear arguments, as taught by the Sacred Rota in the case of the Parochial matter of Cagliari, on January 15, 1759, number 1, before Frangipane. Moreover, Doctors teach that the judgment of the Bishop cannot be challenged as to its "reasonableness," if the one whom the Bishop chooses is found among the approved candidates through

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the competition. Sacred Rota, footnote 5. Cardinal De Luca notes in the Council of Trent, discourse 32, number 25. And rightly so; for if the Ordinary lacked such power to choose among the approved candidates, the act of choosing would rather be attributed to the Examiners than to the Bishop, contrary to the decree of the Council of Trent and the Constitution of Benedict XIV, in which § 11 states: "After a thorough examination, so that it has been sufficiently demonstrated to each, there is only the power for the Examiners to renounce those who..." are not suitable.

[*Latin ed. p. 80*]

80. CONCERNING THEOLOGICAL COMPETITION. They have judged, reserving the choice of the more worthy candidate to the sole Bishop; i) And in the work concerning the Diocesan Synod, book 4, chapter 8, number 6, the same Pontiff left this written: "So clear are the words with which the Council of Trent declares that the judgment of a single Bishop is entrusted with choosing the most worthy among those approved, that it seems wondrous to us that some Doctors should have ascribed this to the Examiners." This, the Holy Congregation of the Council had already taught in the Response to the Bishop of Patavinum in the year 1573, Law 1, Decret, page 110. Furthermore, although all these things that have been upon said refer to the granting of parishes, they are nevertheless rightly extended to provide the theological qualifications, which, according to the Constitution of Benedict XIII, must be conferred in the same manner as parish churches. Thus, the Holy Rota judged in the Imolen canonical theological case, April 2, 1753, before Merlino; and the Holy Congregation of the Council declared openly in the Aversana canonical theological and penitentiary case, November 21, 1829. Therefore, when, on July 11, 1846, at the Congregation of the Council in Urbisvetana, the question was raised that a Bishop had chosen, from among three candidates approved through the competition for the theological position, the one who was approved by the Examiners in second place in terms of knowledge, and in third place in terms of other merits, having set aside the others who were deemed more worthy either in terms of knowledge or in terms of other requirements: the proposed doubt was: "Can it be affirmed, and in what way, that the Bishop's judgment in the election was unreasonable?" The Holy Congregation responded: negatively in all respects; and furthermore. It was not said that Lawrence was hindered by the privilege that Anthony claimed as a Censor of the Theological Academy in Urbisvetana; for Lawrence himself had also given his name to the same Academy, and had worked in laude for it for many years, although he had not reached the rank of Censor Emeritus, having been called to his homeland, he accepted the office of teaching theology from the Ordinary. Therefore, it was concluded: either Lawrence enjoys the same privileges, and in that case, the privileged person cannot use his privilege

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against another who is equally privileged; or, if Anthony lacks something that Anthony possesses, then Anthony could only be favored in some way if all other things were equal. With these and other considerations, the proposed question is to be resolved.

[*Latin ed. p. 81*]

IF A THEOLOGICAL CONSULTATION IS REQUIRED. Doubt. "Does it concern a bad report from the Examiners, and an unreasonable judgment by the Ordinary in the case?" RESOLUTION. – The Holy Congregation, having knowledge of the matter, decided on December 17, 1864, to respond: negatively in all respects. A new hearing was requested by Anthony, the proposed cause being presented on February 18, 1865, with the formula: "Whether one should adhere to, or recede from, the decisions in the case." The Holy Congregation, after a new discussion, responded: in the decisions; and furthermore. From this, we gather: The Constitution of Benedict XIII, *Pastoralis officii*, for Italy and the adjacent islands, first published, which prescribes that a theological and penitential consultation must always be given to those who have been deemed more suitable by the Examiners, does not exclude the judgment of the Bishop, by which he can grant it to those whom he judges to be more suitable (1). REDUCTION OF CANON. January 28, 1865. Session 25, chapter 2, concerning Reform. Summary of the facts. Among the assets of a certain chapel, a plot of land was listed, which was partially cultivated with grain, but lacking trees, and was estimated at 120 scudi, yielding approximately 14 measures of grain annually. The respondent stated that the annual revenue from this land was 120 scudi. The chaplain of this property petitioned the Holy See, requesting that it be granted to a certain Augustine in perpetuity, who would pay an annual canon to the chaplain.

(1) See Acts, Appendix IV, volume II.

[*Latin ed. p. 82*]

82. REDUCTIONIS CANONIS. He was to furnish nine or ten measures of grain, and furthermore, to plant the field with vines and trees within two years, with the obligation thereafter of paying to the aforementioned Cappellano one-quarter of the grapes. After all things had been properly carried out, as ought to be done, the Holy Congregation granted the Ordinary the necessary faculties to complete the agreement, with due regard for the right of the twentieth part [of tithe], along with all customary dues, and for the benefit of the pious cause, with the aforementioned pacts and conditions, and especially the condition that improvements should revert to the soil. Since no other offeror appeared, the Cappellano proceeded to the stipulation of the agreement, and offered Augustine perpetual emphyteusis [a form of long-term lease] under the following pacts, which were accepted by both parties: 1. That the emphyteuta [tenant] should, within two years,

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cultivate the entire field with vines and trees; 2. That, in addition to the annual payment of one-quarter of the grapes, he should render a canon [a fixed payment in kind] of a determined measure of grain, approximately nine measures. This canon was to be paid entirely free from all taxes and levies; if these conditions were not fulfilled, a penalty would be imposed, and the improvements would revert to the soil, without the emphyteuta being able to demand any compensation; 3. That the ownership of the property should never be alienated without the consent of the Cappellano at the time, and the payment of a laudum [a fee for transferring the lease]; 4. That the emphyteuta should not be able to claim any reduction of the canon due to any unforeseen event, whether foreseen or unforeseen. Finally, the emphyteuta subjected another property to a mortgage as security for the canon, and sent notification to all concerned, both present and future, regarding the aforementioned obligations. With this agreement established, Augustine, with a cheerful spirit, began the cultivation of the field, which appeared to be the primary goal of both parties, and without complaint, he paid the canons accurately for nine years. However, after this time, the supplicant [Augustine] approached the Holy Congregation, stating that he had entered into the agreement believing the land to be more fertile; but now he realized that the property barely produced enough grain to pay the canon that he was obligated to pay to the Cappellano, and he requested, as a favor, that the canon be reduced to one-quarter of all the fruits of the property. He also presented a testimony from a surveyor, which is what they call expertise, in which, after describing the property, the surveyor testified that, if new expenses were incurred and new improvements were made to the soil, the property could yield enough to pay the canon.

[*Latin ed. p. 83*]

REDUCTION OF RENT. 8S. Forty-five annual measures of grain, of which one-quarter part could be estimated at approximately five *scutati* per year. When asked by the Ordinary to hear the arguments of the Rector of the chapel and others involved, and to express his opinion regarding the just cause for the reduction, he stated that the chaplain opposed the petition; and the Ordinary himself abstained from expressing his opinion. A concise discussion. FROM WHAT FAVORED THE EMPHYTEUTAE. It was observed that, in itself, the present controversy was of slight importance if the facts are considered; but it is not so if the legal question is raised. And indeed, a true and proper emphyteusis was in question, as demonstrated by the name given to the contract, the use of the term ″canon″ to signify annual payments, the prohibition of alienating the useful property without the consent of the lord, the payment of laud, the penalty for default, etc. Card. De Luca, *De Emphyteusi*, discourse 31, paragraphs 9 and 10. It is indeed generally accepted that a small canon should be due from a contract of this kind, due to the inherent nature of the

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contract. For in ancient times, such contracts usually involved uncultivated land, which was granted to someone with the obligation of paying a certain tribute in recognition of the lord's dominion; and although, over time, even fertile lands have been subject to emphyteutic contracts, as Valasc. states in *De iure emphyt.*, question 1, number 6, and question 2, number 5: nevertheless, the moderation of the canon has become so characteristic of this contract that, if the canon in any way corresponds to the produce, the authors teach that the contract is to be considered as a lease or a form of tenancy. Card. De Luca, *loc. cit.*, paragraph 8. This contract is different from emphyteusis. L. 1 C. *De iure emphyt.* (i). (t) In the cited passage, Emperor Zeo states that all that was established between the two parties, whether by written agreements or otherwise, should be added to the emphyteutic right, "so that this right, whether it be of lease or of alienation, should also be maintained in fortuitous cases, and that these agreements should be preserved by the inviolable and perpetual stability of the contracts of both parties, so that, if, at times, those things that happen by fortuitous events should have their own definition, the agreements should not be considered an unjust and invalid contract, if indeed such is the agreement."

[*Latin ed. p. 84*]

84. OF THE REDUCTION OF THE CANON. Although the authors differ in their opinions regarding the proper proportion of the canon in relation to the fruits, they agree on the very concept of its thinness. Fulgentius, *De Contractionibus Emphyteuticorum*, question 28, number 4; Pacius, *De Locat. Cond.*, chapter 45, number 3. Consequently, the excess of the pension so burdens the contract that it appears to be a burden, as Barbosa notes in chapter "Cum Dilecti," number 11 and 20, concerning emphyteusis. And therefore, it carries with it a very great or even enormous injury. For, in estimating the injury in an emphyteutic contract, a different standard seems to be required than that which is observed in contracts of purchase, sale, and lease. In these contracts, pensions are paid either in respect of the thing itself or of the fruits; whereas, on the contrary, in emphyteusis, the canon is paid solely for the recognition of a dominion, which is in another, and which is called direct dominion. From this it is clear that the canon must be paid by the emphyteuta solely in obedience to the lord. Therefore, whenever the contract tends to the detriment of the emphyteuta because of a canon that exceeds even a small amount of the fruits, a very great injury must certainly be said to exist. Furthermore, in the present case, such an injury seemed to exist. For, the emphyteuta was obligated to pay twenty measures of grain for a barren field, estimated at 120 scuta, which barely provided 5 scuta annually to the Cappellano. Such an excess of the annual prestation, whether considered in terms of the real value of the property or its real income, seems to constitute a

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very great injury, even if the injury is estimated in the manner in which it is usually estimated in other contracts, according to law 2 C. de rescind. vendit. Nor did it seem that a different opinion should be held if the justice of the canon were considered according to the most recent expert opinion presented by Augustine. From that expert opinion, it was gathered that the property could yield 45 measures of grain annually; furthermore, such an income, if lost, would cause a complete ruin, which the emphyteuticarius, to whom nothing remains, would have suffered, and this should be imputed to the lord, who, even without any intervening circumstances, would not hesitate. But if a particular or other slight damage occurs, from which the substance of the thing itself is not injured, this, emphyteuta, would be to the detriment of the lord, who, even without any intervening circumstances, would not hesitate.

[*Latin ed. p. 85*]

REDUCTION OF THE CANON. 85. In Linz, the land was estimated by a surveyor, and therefore, in order to achieve the desired result, it required many labors and expenses, not only for the ordinary cultivation of the land, but also for the extraordinary work in the lowest part of the property, which was abundant with water. Hence, if one deducts from the aforementioned income the taxes imposed and to be imposed; and also considers the expenses and labor of the tenant; and finally, takes into account the vicissitudes of the seasons: it seemed very difficult that there would remain sufficient produce to pay the canon, so as to avoid the prejudice of a very great loss, which should be assessed according to the nature of this emphyteutic contract. Therefore, in similar cases, the Holy Congregation of the Council has either ordered a reduction of the canon, or the rescission of the contract, as in the case of Fabrianen, Rescission of Contract, December 20, 1816, and in the case of Senagallien, Transaction, May 8, 1819. But the rescission of the contract in the present case would worsen Augustine's condition due to the loss of expenses and labor invested in the better cultivation of the property, which would revert to the owner; therefore, there remained only one thing to do, which was to assist him by a fair reduction of the canon. For it seems an intolerable evil that the tenant should be forced to suffer the inevitable ruin of his property in order to pay a tax, which, although it may exceed the actual produce somewhat, nevertheless would permanently diminish his substance, and enrich another without a legitimate cause, as the Holy Rota has often observed.

THINGS ADVERSE TO THE TENANT. — On the other hand, several things were brought forward, in accordance with the law, which equally demonstrated that the place was not subject to a reduction of the canon. For although, from the ancient origin of the emphyteutic contract, the canon might have been a moderate sum, given to the lord in exchange for the barren land granted: over time, custom prevailed, so that the annual canon

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corresponded to the fruits of the property. This is indeed the practice most commonly used today; especially in the case of ecclesiastical emphyteuses, which are to be regulated and administered according to the Constitution, or Motu Proprio, of Benedict XIV, of November 23, 1742, and according to the Decree of the Sacred Congregation of Bishops and Regular Canons, of March 18, 1835 (1). With this established, and since the nature of such a contract has been somewhat altered, and is now associated in some way with a lease, we have cited the aforementioned Constitution and Decree in Vol. I, p. 252 and following.

[*Latin ed. p. 86*]

86. REGULATION OF THE CANON. Concerning contracts of lease, as the Authors teach, it is established that a significant injury is not admitted, unless it is certainly proven that the pension of the leased property, or that given in an emphyteusis, is more than double the fruits, according to what was handed down by the Sacred Roman Rota in Tivoli on December 10, 1832, and in Camerino, in the Regulation of the Canon of Redemption, March 15, 1837, § 6, before De Cursiis. For since emphyteusis is commonly included under the general name of lease, it seems fitting that the same rule should apply to it, by which contracts of lease are governed; especially in cases in which the canons correspond to the fruits of the property, as the same Sacred Rota handed down in the decision of the Association, July 5, 1771, § 10, before Origo, and in its confirmatory decision, May 10, 1772, before Ratto. To these precedents, the practice of the Holy Congregation has added, which has judged that, in the absence of an injury exceeding one-half, the canon of redemption should be denied, as is evident from Mauraten, Emphyteusis, September 23, 1788, in Fermo, May 17, 1817, and August 24, 1819, in Senogallien; in the Regulation of the Canon, August 27, 1831, and recently in Tuscidana, in the Regulation of the Canon of Redemption, August 8, 1863. Furthermore, after examining the emphyteutic contract between the aforementioned Chaplain and Augustine, no basis seemed to exist upon which a complaint of injury could be sustained, according to the established doctrine. For, after examining the income that the Chaplain received in five annual scudi, and the canon agreed upon in nine or ten annual scudi, not only did the canon not exceed double the income; but it scarcely reached it, or perhaps did not even reach it. Moreover, if, according to the expert testimony produced by Augustine himself, the matter were considered, it became clear that the canon was much less than the income, if the property were subjected to the industry of a more diligent cultivator. For the nature of this contract is such that not only the fruits that are actually produced should be considered, but also those that can be obtained through better cultivation, as Paul, after Theoricus, de Castro, taught in the authentic text. If any ruins exist, as the Sacred Congregation of Rites taught in decision 1186, n. 2, before Emerix junior, in Camerino, in

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the Regulation of the Canon of Redemption, March 15, 1837, and elsewhere. To these were added another observation, by which the division of vines agreed upon with the emphyteuta seemed to be estimated, by reason of which the aforementioned emphyteuta was considered as a tenant farmer, and perpetually divided the income with the Chaplain, as if by the law of partnership, as Voet states in the Pandects, L 19, lit. 2, n. 8.

[*Latin ed. p. 87*]

REDUCTION OF THE CANON. 87 Finally, it was observed that if there were an undeniable injury, the words of the Law, namely, 2 Cod. de rese. vend., which grant the seller the option of either receiving a supplement to the price or rescinding the contract, should nevertheless be considered. This legal provision also extends to the emphyteusis, whether the direct lord or the useful lord objects to the injury, as Barbosa states in L. 2 C. de rese, vend. n. 72 and others. Therefore, even in the case of an existing injury, it seemed just to grant Augustine a reduction of the canon, while simultaneously granting the Chaplain the right to choose the rescission of the contract. Furthermore, after presenting other examples, namely, the case of Camerinen. Reduci. Canonis, which was debated three times in the Sacred Rota, and finally definitively decided on March 15, 1837; and also another case recently resolved in the Sacred Congregation of Councils regarding the Reduction, or Emancipation, of the canon, on August 8, 1863, the following question was proposed: "Whether, and in what sum, is there a place for the reduction of the canon in this case?"

RESOLUTION. — The Sacred Congregation of Councils, having knowledge of the matter on January 28, 1865, deemed it fitting to respond: negatively in all cases.

FROM THE PREMISES:

I. Emphyteutic contracts, in which the canon is compared with the fruits of the property, take on the nature of a lease agreement.

II. Therefore, to the extent that such contracts are similar, they are governed by the same laws. Where the reason for the law is the same, the same disposition of the law should apply.

III. Hence, no one can complain of a serious injury, unless they prove that the established canon is more than double the fruits of the property received in emphyteusis (1).

(i) The Law 16 ff. de minor. §. 4 states: "Pomponius says: In the price of purchase and sale, it is naturally permissible for the contracting parties to deceive each other." - "Nor does a complaint of injury have a place at that time, unless it is established by fear, trickery, or fraud." Later, it was established that fraud could be argued from the very fact, namely, that the difference in price was too obvious: so that it would not be in some

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uncertain estimation, the Emperors Diocletian and Maximian issued a constitution, which is found in law 2 Cod. de Rescindendo, venditione, with these words: "If you or your minor son have taken a higher price; it is just that, either by returning the price to the buyers, you receive the property, with the intervention of a judge; or, if the buyer chooses, you receive what is lacking in the just price." It seems less just if not even half of the true price has been paid." This provision is extended to all contracts made in good faith, among which the emphyteusis is usually included.

[*Latin ed. p. 88*]

SS. EXAMINATORUM SYNODALIUM. Die 23 Septembris 1865. Episcopus N., in relatione status suae ecclesiae ad S. C. Concilii transmissa, inter alia, postulatum sequentem iudicio Sacri Consessus subiecit: "In dioecesi, ex consuetudine, sicut in aliis ecclesiis regni, Examinatores synodales, pro examine et ratione laboris in concursu pro obtinendis parochiis, aliquod parvulum emolumentum suscipiunt. Estne sustinenda haec consuetudo, vel omnino abolenda, licet memorabilis, tamquam Tridentino contraria? Ut planior redderetur via in dubii examine, idem Episcopus rogatus est ut referret in quo consisteret eiusmodi emolumentum, et utrum idem mos obtineret in circumiacentibus dioecesibus, praesertim ecclesiasticae eiusdem provinciae." Quibus inter cetera responsum fuit: "Emolumentum, quod ab Examinatoribus pro-synodalibus percipitur in hac dioecesi, ad 13, vel 15 regalia reduci potest, pro unoquoque ex adprobatis... Non ita in circumiacentibus dioecesibus, sed in quibusdam eiusdem provinciae, ad quam haec dioecesis pertinebat, aliquod stipendium a pro-synodalibus percipiebatur, non idem in omnibus sed maius vel minus."

EA QUAE EX OFFICIO OBSERVABANTUR: Tridentina lege, in Cap. I, sess. 24, de Reform., Examinatoribus synodalibus praescribitur: "Iurent omnes ad sancta Dei Evangelia, se, quacumque humana affectione postposita, fideliter munus exsecuturos. Caveantque, ne quicquam prorsus occasione huius examinis, nec ante nec post accipiant; alioquin simoniae vitium tam ipsi, quam alii dantes, incurrant, a quo absolvi nequeant, nisi dimissis beneficiis, quae quomodocumque etiam antea obtinebant, et ad alia in posterum inhabiles reddantur."

Nonnullis vero animadversis, adducebantur analogae Resolutiones, quae in antiquis Regestis S. C. C. reperiuntur, videlicet: in Aurien. lib. Decr. 2, pag. 193, Episcopus declarari ab Emis Patribus rogabat, an Examinatoribus in synodo dioecesana, iuxta formam Concilii Tridentini deputatis, aliquo modo et vigore consuetudinis, liceret, citra vitium simoniae, peracto Synodo,

[*Latin ed. p. 89*]

SYNODAL EXAMINERS. 8. It was asked whether an examiner, having received a benefit from the one to whom the benefice had been granted,

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could receive something from him, by reason of said examination. And the Holy Congregation responded: it is not permitted. Furthermore, in Saleranus, book of Decrees, 2 pages, 252, it was asked: what should be thought concerning a decree of a diocesan synod, by which it had been established that a certain stipend should be paid to the examiners from the fruits of particular churches, or other vacant benefices? And a rescript was issued: the Archbishop cannot establish such a stipend, and the decree of the diocesan synod is null and void. In Civitatenus, book of Decrees, 7 pages, 70, ad III, the Holy Congregation responded: it is not permitted for synodal examiners to receive anything, notwithstanding any ancient custom. Garzias reports in his work on ecclesiastical Benefices, treatise, paragraph 8, chapter 1, number 78, that in the provincial council of Toledo in the year 1566, and in the provincial council of Compostela, it had been decreed that Ordinaries, according to the judgment of their own conscience, should order that examiners be paid a just reward for their work from the revenues of the vacant church, which otherwise would be due to the Rector. However, the same author, after stating that some Doctors were present who did not consider such a decree to be contrary to the law of Trent, concludes that it should nevertheless be considered contrary, from the aforementioned decree. §. Let them take care, and from the declarations of the Holy Congregation. Finally, a similar resolution was issued in Iacen, on January 14, 1758, in which the matter was discussed of a very ancient custom prevailing in several dioceses of Spain, which had also been approved by provincial councils, by which one elected to a parish was to pay a certain sum both to synodal examiners and to the officials of the episcopal curia, either as a stipend or as a gratuity. However, when a certain person elected to a parish refused to pay the entire sum, the question was raised before the Holy Congregation. The Fiscal Procurator insisted on the payment of said sum, especially on the ground that this custom did not seem to be contrary to the law of Trent, since there was no prior agreement, and therefore there was no vice of simony; however, the question remained: <c Whether and which emoluments are due on the occasion of the examination in the competition for parochial positions? The Holy Congregation responded: with regard to the Presidents, and Examiners, negatively; in the others, to the Most Eminent Prefect, according to his judgment.

[*Latin ed. p. 90*]

90. OF SYNODAL EXAMINERS. It was not overlooked that certain authors held the opinion that such a practice was permissible, namely, Peter Navarrus, *De vestitu*, Book 2, chapter 2, paragraph 188; L'Abbe de la Salle, *Summa theologica*, Part 2, Tractate 7, Conclusion 7, proposition concerning the end, around point 18; Castropal, *In praxi episcopi parochialis*, paragraph 1, section 2, doubt 13; Raphael de la Torre, *De religiosis*, Volume 2, question 100, article 6, discussion 3, who do not disapprove of this

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custom, for the reason that the remuneration itself has customarily been paid without any prior agreement, merely in the name of a grant and under the title of a stipend. These authors observe that a worthy minister deserves his compensation. However, Benedict XIV, in his work *De synodo dioecesana*, Law 4, chapter 7, although he did not absolutely approve, and considered it much less worthy of imitation, than what was done by the Fathers of the Council of Toledo, nevertheless, he did not disapprove of it. Having considered these matters pertaining to the office, the following RESPONSE was given. — The Sacred Congregation, after discussing the matter in meetings held on September 23, 1865, decided to respond: "Let the resolution concerning Jaca be given on January 14, 1758. In the aforementioned resolution, which we soon presented, it was decided that no remuneration should be paid to the Presidents and Synodal Examiners on the occasion of the examination in the context of parochial elections, although the elected individuals to the parish customarily paid it to them according to ancient custom. Furthermore, the Eminences of the Fathers in that resolution made known to the Bishop of Jaca the intention of the Sacred Congregation, which was not published.

MASSES FOR THE PEOPLE. On December 9, 1865. Summary of prayers. Bishop N., in a report on the state of his diocese transmitted to the Sacred Congregation of the Council, among other things, proposed the following question: "In this diocese, there are certain filial churches, which are governed by assistants to the parish priests, who receive a small pension from the Supreme Government. These assistants do not offer the Mass for the people on feast days. The question is whether..."

[*Latin ed. p. 91*]

MASSES FOR THE PEOPLE. 91 » etc., whether they ought to be celebrated, or, conversely, whether they ought to be offered for the people: "on the aforementioned days?" To resolve this question with fuller knowledge, "it seemed opportune to ask the same Bishop to report whether the filial churches are conferred with a perpetual title; whether they have their own people, distinct from the mother church, within defined limits; and whether their Rectors administer the sacraments independently of the parish priest." Furthermore, it was inquired, "what is the amount of the annual parish stipend, including the uncertain expenses of both vestments." To these questions, the Most Reverend Bishop replied: "I observe that the doubt is presented more clearly: the filial parishes or churches are by no means conferred with a perpetual title; they have their own people, distinct from the mother church, within defined limits; and their Rectors (Coadjutors) administer the sacraments depending on the parish priest; the amount of the annual parish stipend, not including the uncertain expenses of both vestments, about which an agreement is usually made between the parish priest and the coadjutor, etc."

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THOSE THINGS WHICH WERE OBSERVED BY OFFICE.

Two principles were presupposed, namely, that the application of the Mass for the people on Sundays and other feast days should be included among the parochial duties, and that it is incumbent by reason of office on the parish priest, and on anyone actively engaged in the care of souls, whether he is a permanent vicar or one who can be removed at will. The Council of Trent, Session 23, Chapter on Reform; Benedict XIV, Constitution *Cum Semper Oblatas*; Pius IX, happily reigning, in the Constitution *Amantissimi Redemptoris*, and the Holy Congregation, have all defined that this obligation is fulfilled by a single Mass for the people, even if there are several parochial churches united to it, provided that the union is subjective, as has been declared on several occasions, as in Nusco, January 1, 1756, §. And elsewhere. Therefore, the question that remained to be investigated in the present matter was: whether we were dealing with only one parish, or with as many parishes as there are filial churches.

However, since the resolution of the proposed doubt depended on the facts, it was observed that although the churches of which we are speaking are said to have their own distinct people, such a distinction must certainly be introduced, lest confusion arise in the exercise of jurisdiction delegated to each Coadjutor, and not that there are as many parishes as there are filial churches. This, indeed, seemed sufficiently evident from the words of the Most Reverend Bishop.

[*Latin ed. p. 92*]

92. MISSES FOR THE PEOPLE. In the narration, it is stated that one church is the ”matrix” (mother church), while the others are merely ”daughter” churches, to which are appointed Coadjutors who administer the sacraments, depending on the Parish Priest, and among whom a convention often takes place regarding matters uncertain to both groups. Considering these points, since it was clear from what was said that there was only one parish, to which a titular Parish Priest actually presided, it was decided, and not the Coadjutors, that the Mass for the people should be offered, as was resolved in Alben on July 17, 1723, in *lib. Decret.*, 73, page 367, in which it was inquired whether one Archpriest was obliged to celebrate the Mass for the people; or rather, whether other Canons in other assisting churches were also obliged. And the Sacred Congregation of Councils (S. C. C.) decided that only the Archpriest was obliged to offer the Mass for the people on feast days. The same Sacred Congregation of Councils responded in Nusco on January 17, 1756, in which it taught that the Canons of the collegiate church of Saint Mary of Planot were obliged to celebrate only one Mass for the people on feast days, even if there were several parish churches united to it. For to the question: ”Do the Canons of the collegiate church of Saint Mary of Plano... are obliged to

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celebrate one Mass for the people; or rather, so many Masses as there are parish churches united to it?" the response was: affirmatively to the first part, negatively to the second. After all these discussions concerning the duties of office, the following response was given to the doubt proposed by the Bishop: The Sacred Congregation of Councils, having considered the matter in the meetings held on December 9, 1865, decided to respond as follows: According to what is presented, it is not required. Having, in fact, taken into account the exposition of the facts, from which it appeared that the daughter churches were not distinct parishes from the "matrix," but constituted one parish with the "matrix," although they had a distinct territory; those who are in charge of the daughter churches, namely, the titular Coadjutors of the Parish Priest, are not obliged to offer the Mass for the people (1). (1) More about the offering of the Mass for the people, and about the union of parishes, and the nature of that union which must be most carefully considered, are found in the first volume of these chronicles, as indicated in the index thereof.

[*Latin ed. p. 93*]

93 IX S, CONGREGATION! OF BISHOPS AND REGULAR CANONS. MID-YEAR. On March 19, 1866. Summary of Facts. Since the Chapter of the cathedral church of the city of N. had earnestly requested the Sacred Congregation of Bishops and Regulars to grant a reduction in the number of Masses, in order that the alms collected for their celebration might be applied to certain necessary repairs to the cathedral, it became known to the Sacred Order that, not only in that city, but throughout the entire diocese, the prescription of the Constitution of Benedict XIII, for Italy and the adjacent islands, beginning "Pius et misericors in Concilio Romano anno 1725 editae," was not strictly observed. Furthermore, those who were responsible for granting benefices did not truly and faithfully pay half of the fruits received in the first year after the beginning of possession, as is stipulated in that same Constitution, but rather, they were accustomed to paying a certain and determined sum of money for the construction of cathedrals or collegiate churches, according to the custom of those places, which provided, for example, that each canon in the cathedral should pay twenty shillings; in the collegiate church A, the canons of the first foundation paid thirty-five shillings, the others of the second foundation paid twelve shillings; and finally, in the collegiate church B, they never paid more than twenty shillings. Therefore, the Sacred Congregation of Bishops and Regulars, in its decree granting the reduction of Masses, added a clause, stating that "the Ordinary shall see to it that future canons and beneficiaries fully pay the mid-year contribution to the benefit of the Church, according to the prescription of the Constitution of Benedict XIII." The Bishop, faithfully obeying this mandate, without any delay, issued an edict for the entire diocese, in which he recalled the aforementioned Constitution

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for strict observance, and added other laws by which such payments and the disbursement of revenues would be regulated. In addition to this edict, three canonical prebends were made vacant.

[*Latin ed. p. 94*]

94. MIDDLE ANNUITIES. Indeed, there was one in the Cathedral, another in the Collegiate Church A, and a third in the Collegiate Church B, and therefore the new possessors of these were warned "to pay half of the fruits which they had received in the first year to the Cathedral or Collegiate Church, according to the rule of the Benedictine Constitution and the edict recently promulgated by the Bishop." But this was in vain, for each maintained that they were to be excused according to ancient custom, which held a legitimate title, and was in no way inferior. Therefore, they did not hesitate to jointly present a common petition to the Sacred Congregation for Ecclesiastical Affairs and to the King, in which they requested that the same might be pleased to abolish the episcopal edict, and to confirm the particular custom by their decree. The Sacred Congregation, according to its practice, transmitted the petition to the diocesan Bishop, so that he might report on the matter, and also reveal his opinion. Furthermore, it ordered him to inquire of each Chapter, to which the canonical petitioners belonged, and to report the written responses. Finally, the petitioners were warned that the controversy raised by them was to be debated and decided in a full assembly. The Bishop reported that the custom brought before him was indeed in practice, but that it was not to be considered legally binding, since Benedict XIII had abolished all custom, even one of a hundred years and therefore unmemorable. Furthermore, he noted that neither the Cathedral nor the Collegiate Church had any other revenues for the maintenance of the building, except those derived from those who were recently appointed by the Canons. The Chapters of the Cathedral and the Collegiate Churches, when heard, adhered to the custom, and did not believe that it should be abandoned, especially since, as they claimed, the middle annuity, although not of the amount defined by the Constitution, was nevertheless not entirely negligible, since the sum was paid which had been established by the most ancient usage; otherwise, what prevented the prescription against the Benedictine Constitution from having its effect, if not in substance, at least in the manner of paying the middle annuity? These were the points of reason that were brought forward, and I consider it superfluous to expound them more fully here. Instead, I proceed to the matters that are to be considered.

[*Latin ed. p. 95*]

MIDDLE ANNUITIES. Ninety-five cases were observed, so that it might be judged whether the established custom could be maintained in law, while otherwise it was not doubted that the same custom actually existed

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in practice. A synopsis of the discussion. — His Holiness Benedict XIII, in order to provide a stable means for the protection of cathedral and collegiate churches, issued a Constitution in the Roman Council in the year 1725, which begins: "Pius and merciful," idus of May of the same year, in which he decreed that "those provided for in parishes, together with those who are uncertain [of their status], whose annual income exceeds one hundred scudi in Roman money, and those from prebends and benefices—situated outside of collegiate churches—shall be obliged to pay and respectively deposit the middle annuity for the construction of the cathedral church. Those provided for in parishes, together with those who are uncertain, whose annual income exceeds one hundred scudi, and those from prebends and benefices... situated in collegiate churches... shall likewise be obliged to pay and respectively deposit the middle annuity for the construction of the collegiate church..." Although, according to canon law, the protection of cathedrals pertains to the Bishop and the Chapter, nevertheless the Supreme Pontiff decided that the obligation to pay the middle annuity should remain in force. However, an exception was made in the case where the church already has sufficient provisions, either because it has sufficient income for that purpose, or because there are patrons to whom this obligation belongs; in such cases, it is stipulated that "We wish that the benefices of those dioceses, and respectively of those collegiate churches, in which there is found a work or a special patrimony for the construction sufficiently endowed: or the burden or obligation of repair... rests with the local communities, or there are patrons of said churches. And indeed, whenever such conditions are present, those freed from the payment of the middle annuity have been absolved: as in Camerino, and Anagnina, Middle Annuity, May 2, 1783, ad L and II, and Arimino, Repairs of the church, September 19, 1789, ad I. QUESTIONS WHICH WERE DISCUSSED *EX OFFICIO*. The Benedictine Constitution was provided with salutary clauses, namely, with a decree that renders it invalid, and so forth, as has been heard and removed; and furthermore, these clauses are called salutary because the arrangement,

[*Latin ed. p. 96*]

96. MIDDLE ANNUITIES. Those annuities which are established by law remain valid and secure, even though any custom, however ancient, may oppose them; for, as the Doctors and the Sacred Rota have declared in Decision 572, number 2, before the case of the Canonry of Gerunden, March 3, 1727, number 10, before Calcagnino, such opposition has no force or effect. Therefore, the Sacred Congregation of Councils, adhering to this principle, has never considered any custom, even if it involves a sum of money, to be valid against the decree of Benedict XIII, which required the payment of middle annuities, as can be seen in the case of the Middle Annuity of Reatina, May 12, 1770, and in the case of the Middle Annuity

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of Amerina, March 13, 1841. Furthermore, it was determined that, in the calculation of the fruits to be paid in the first year of possession, only those revenues should be included which remain after deducting fixed and real expenses; personal expenses, however, should not be included, as the same Sacred Congregation of Councils decreed in the case of the Middle Annuity of Tivoli, 1754, and in the case of the Middle Annuity of Reatina, 1794. It should also be noted that the payment of the middle annuity can be demanded in order to preserve the church building, but not in order to purchase sacred furnishings, as the Sacred Congregation of Councils decided in the case of Tusculana, December 20, 1727. With these considerations in mind, the purpose is to resolve the doubt: "Whether and in what way the custom in question can be maintained." RESOLUTION. — The Sacred Congregation of Bishops and Regular Canons, after deliberation in its meetings held on March 9, 1866, decided to respond: Negatively. And it is to be observed that the mandate of the Bishop must be obeyed by all. FROM THESE, THE FOLLOWING ARE DEDUCED: I. In Italy, and the adjacent islands, a middle annuity is to be paid from the revenues to support the construction of cathedral and collegiate churches. II. However, churches which possess sufficient assets, or which are subject to the patronage of other communities or individuals, are exempt. III. In the calculation of the fruits, fixed and real expenses must be deducted, but personal expenses must not be included. IV. The payment of the middle annuity can indeed be demanded in order to maintain the church building, but not in order to purchase sacred furnishings. V. Furthermore, the payment of the same annuity cannot be waived under the pretext of a different custom.

[*Latin ed. p. 97*]

97. OF THE ORDER OF JERUSALEM CONCERNING THE RIGHT TO VOTE. April 27, 1886. Summary of the matter. The Most Holy Pontiff, by Apostolic Letters in the form of a Brief, dated July 28, 1854, which begin: "To the Military Order, so that those who desire to be enrolled among the Knights of Jerusalem, may bring forth that deliberation which is necessary in a matter of such importance, lest, acting less prudently, they afterward observe with less care those things which they have solemnly promised to God," derogating from the statutes and laws of the aforementioned Order, prescribed "that in the future, whoever desires to be enrolled as a professed Knight of Jerusalem, shall first make simple vows, but not before having reached the age of sixteen years; and then, after a full period of ten years has elapsed from the declaration of the simple vows, they may be able to profess solemn vows; these simple vows, during the period of ten years, shall be renewed by each Knight each year, so that before renewing the same vows, it shall be free and entirely up to them, with a changed opinion, to pass to the perpetual vows, in which case, We, by Our Apostolic Authority, already now dissolve them from the simple vows, and declare

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them free, equally from all honors, faculties, and privileges, with which they previously enjoyed, or could enjoy, within the Order itself, by virtue of the aforementioned simple vows."

Thereafter, a certain doubt arose as to whether the Knights who were admitted into the Order and who made simple vows, according to the Apostolic Letters, could be summoned to chapters, as is customary according to the constitutions of the Order, in which chapters the affairs of the Order are discussed, so that they would have a vote, equally with the Knights who have professed solemn vows. We omit those things which gave rise to the present controversy, which appear to be less relevant to the legal question.

In fact, the Sacred Magisterium of the Order of Jerusalem, after a more mature examination of the matter, issued a decree declaring: "Only the professed Knights with solemn vows shall have a voice in the chapters." (Acta, vol. II, sect. XIV, 7).

[*Latin ed. p. 98*]

98. ORDINATIONES HEROICAE SUPER IURE FERENDI SUFFRAGIUM. Contra eiusmodi decretum, nonnulli Equites, votorum simplicium pertinentes ad Magnum Prioratum Regni N., nixi tum quibusdam factis, tum iuris principiis, a SSmo authenticam declarationem postularunt. Disceptatio synoptica. PRAECIPUA RATIONUM MOMENTA EQUITUM RECLAMANTIUM. — Ostendebant dicti Equites, in eorum Magno Priorato difficile admodum fore, ut legali numero capitula convocari possent (non sine gravi negotiorum Ordinis detrimento), nisi admitterentur Equites professi vota simplicia. Verum ad quaestionem iuris quod attinet, ostendere studebant ex triplici capite sibi ius competere ferendi suffragium, nempe ex Literis Apostolicis Militarem Ordinem; ex analogis decretis, quae respiciunt Ordines religiosos; ex natura votorum simplicium. Ad primum quod attinet, animadvertebant, scopum dictae Constitutionis Militarem Ordinem, non alium fuisse, quam spirituale bonum eorumdem Ordinis Equitum, non autem iurium et privilegiorum coarctationem: maxime cum in eadem Constitutione, facultate tributa transeundi ad vota saecularia singulis annis, statim subiungatur, Equites ad saecularia vota transeuntes, omnibus honoribus, facultatibus, privilegiis exemptos declaramus quibus antea in Ordine suo vi eorumdem votorum simplicium emissorum frui poterant, vel fruebantur. Quare vi simplicium votorum honores acquiruntur, facultates et privilegia: haec autem non alia sunt, quam ea quibus gaudent Equites professis vota solemnia. Ad alterum quod attinet, animadvertebant iidem reclamantes Equites, plura Decreta emissa fuisse Ordines Regulares respicientia, in quibus professi votorum simplicium participes declarati sunt omnium gratiarum et privilegiorum, quibus professi votorum solemnium in respectivis Ordinibus legitime utuntur, fruuntur et gaudent. Ex quibus iidem Equites inferebant, aequiparari omnino, cum de gratiis agitur et privilegiis, utrosque professos

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sive votorum simplicium sive solemnium. Privilegiorum autem nomine intelligi omnia et singula privilegia, inter quae reperitur privilegium ferendi suffragium.

[*Latin ed. p. 99*]

ORDINATION OF PRIESTS: CONCERNING THE RIGHT TO BESTOW THE SACRAMENT. 99 Regarding the third argument, it was noted that it is the common opinion of canonists that a solemn vow is not essentially related to the nature of a religious order. Schmalzgrueber, asking: "Is it essential to religion that the vows given within it be solemn?", responded: "There have not been lacking Doctors who would defend the affirmative." But the negative opinion must be maintained, namely, that it is sufficient to constitute a truly and properly called religion to emit within it simple vows. It is undoubtedly the case today, after the Constitution of Gregory XIII, which begins: *Ascendente*. And indeed, they continued, the difference between a solemn vow and a simple vow is, according to what the most learned Suarez teaches, not substantial: "A simple and solemn vow of chastity is intrinsically only a promise, the nature of which is not changed by a Constitution introducing the force of annulling subsequent marriage." Therefore, it should not be surprising if those who are professed with simple vows are equated with those who are professed with solemn vows.

PRINCIPAL POINTS OF SACRED MAGISTERIUM. — The Supreme Magistrate of the Order of Jerusalem initially insisted that the complainants had not exhausted all the means by which the Knights should be assisted, according to the statutes of the Order. However, when considering the merits of the matter, he observed that, according to the Constitution, nothing could be granted to the Order in favor of the complainants. For the words that were brought forward to the contrary were indeterminate, and could not be referred to chapters or other rights, which, according to the same statutes, are denied to them. And if it is otherwise established for religious orders who live together in a cloister, it has been formally and expressly declared. Therefore, since this was not the case in the Constitution concerning the Military Order, the contrary must be argued. What the Supreme Pontiff willed, He expressed; what He did not will, He did not express. Furthermore, it was observed that, in the same year in which the aforementioned Constitution was issued, a certain desire had been revealed by some Knights in another Priory to participate in certain benefices, which might perhaps be vacant; but the Supreme Magisterium resisted. For those who are not perpetually bound to the Order could enjoy the participation in the benefices with the intention of later leaving the Order. Moreover, if these Knights were to be equated with those who have devoted themselves perpetually to the Order through solemn vows, there

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would be no...

[*Latin ed. p. 100*]

100 DECREES. CONCERNING THE RIGHT TO CAST A VOTE. It would appear that even in this matter, equality is not considered. However, all of these things gained their greatest force from the following reason. The fundamental basis of the illustrious Order of Jerusalem is nothing other than its constitution, which is an irrevocable solemn vow that places the Knight in the condition of actively engaging in the principal affairs concerning the governance of the Order. For the Knights do not live together in a religious or monastic house, except for the Magistral House. Therefore, the safeguard of the Order is nothing other than this solemn vow, which ensures that the Knights seriously care for the Order itself. The Military Constitution does not intend to undermine the foundation; rather, it was issued to further confirm it, namely, that those who wish to be admitted as Brothers should bring mature counsel to the matter, which is necessary in such an important matter, so that, acting with less consideration, they do not, to the detriment of their eternal salvation, later observe less carefully those things to which they have solemnly pledged themselves before God. Another matter, which by its very nature required further explanation, was observed, namely, that the congregations of which mention is made in the Code of Jerusalem appear to be of three different kinds. The first is the general chapter; the second is the provincial chapter; the third is what is called the "collecta." In the present case, however, we are dealing with the second type of election, in which the affairs of the province are discussed, and especially the admission of candidates, and the economic administration. In such chapters, according to the statutes of the Order, only Brothers have the right to vote, that is, those who have remained for three years and have explicitly made their religious profession. Furthermore, all those who have made their profession in the Order are included under the name of Brothers. This is from the Code of Jerusalem. What is understood by the term "profession" cannot be doubted; although the Military Constitution could not have foreseen this in establishing its statutes.

MATTERS OBSERVED BY NECESSITY – Concerning religious orders, in which simple vows must precede solemn profession, the Most Holy Pope, on February 7, 1862, prudently established in the Constitution, Ad universalem, article 8: The years of profession required in said Order, in order that one may enjoy the active and passive vote, and be admitted to offices, shall be counted from the day of the emission of the simple vows; and those who have made their solemn vows.

[*Latin ed. p. 101*]

ORDINATIONES HEROICAE. DE QUIBUS LICE EST SUFFRAGIUM FERRE. 101. Simpliciter professi habeant suffragium in actis capitularibus

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sui conventus, prout et quatenus habent solemniter professi. Ex quo concludebatur, professos votorum simplicium vocem activam non habere in negotiis ad provinciam spectantibus. Quin imo, dum agitur de admissione aliorum ad solemnia vota, haec resoluta habeantur. Rerum Generalis Praedicatorum, Summo Patri supplicavi! pro solutione sequentis dubii: « cum ex » praefati decreti tenore art. 8, professi votorum simplicium » suffragium habeant in actis capitularibus sui conventus, » quatenus, et prout habent solemniter professi, quaeritur: an inter)) huiusmodi actus capitulares recenseantur etiam actus receptionis » ad votorum solemnium professionem; nam praeterquam » quod votorum simplicium professi non sint de corpore pro» fessorum solemniter, contingere potest, quod professi simplices » numero excedant professos solemniter, et inter eos periculum » collusionis enascatur, cum alii post alios, vel simul, vel post » breve tempus, ad solemnem professionem admittendi sint. » Cui die 7 Februarii 1862, Sanctissimus respondere dignatus est: negative. Hisce aliisque animadversis, propositum est resolvendum. « An et quomodo Professi cum votis simplicibus in Ordine » Hierosolymitano ad formam Brevis Militarem Ordinem ius ha)) beant ferendi suffragium in capitulis. » RESOLUTIO. — Sacra Congregatio Episcoporum et Regularium, in comitiis habitis die 27 Aprilis 1866, re mature discussa, respondere censuit: negative; et amplius. EX COLLIGIS. I. Quamvis generatim Professi cum votis simplicibus in Regulari Ordine in pluribus aequiparentur Professis cum votis solemnibus; non tamen eos ius habere sese ingerendi in maioribus Ordinis negotiis, cuiusmodi ea sunt quae pertractantur in capitulis provincialibus. II. Ius tamen habere ferendi suffragium in actis capitularibus sui conventus, quae ad solemnem professionem non referuntur.

[*Latin ed. p. 102*]

102. DECREE OF THE HOLY OFFICE. CONCERNING THE RIGHT TO CAST A VOTE. III. In the most distinguished Order of Jerusalem, moreover, special reasons exist, by which the right to cast a vote is denied to those professed in the aforementioned chapters. IV. Nor does such denial of this right apply to the Military Order, which is under the authority of the Apostolic See. For in it, it is only established that those who abandon the Order lose all those privileges with which they could enjoy the simple vows within the Order. V. Therefore, the question remained under consideration as to whether these Knights possessed the right to cast a vote. FROM THE HOLY CONGREGATION OF INDULGENCES. We have already presented in our publications several decrees concerning indulgences, and, with God's help, we will continue to do so. But since the Holy Congregation to which we refer is not only concerned with resolving questions regarding indulgences, but also with Sacred Relics, we will also present decrees of this other kind. Since such decrees are rarer, we will present some older ones,

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which, although they have been published, have not yet been discussed by the Consultors. In such discussions, although a definitive reason for the decision is not always found, which the Holy Congregations are not always obliged to reveal by their constitution, nevertheless, a doctrine certainly not foreign to the reason for the decision is often contained, which illuminates the resolution. ATREBATEN. On January 31, 1848. "The Cardinal de la Tour d'Auvergne Lauragais, Bishop of Atrebatum in Gallia, declared that he possessed the relics of St. Francis of Sales."

[*Latin ed. p. 103*]

ARRAS (Arras - Boulogne-Saint-Omer). 103 relics (commonly called a reliquary). Now, in order that this reliquary may be exposed for public veneration, and after documents have been presented to the Sacred Congregation, the following is inquired: I. "Does it appear to be authentic?" And the answer is affirmative. II. "Is veneration of it permitted?"

RESOLUTION. — The Sacred Congregation for Indulgences and Sacred Relics, having examined the documents and heard the opinions of the Consultors, responded on January 21, 1848, as follows: To 1. It does not appear to be the case. To 2. Provision is made in the first. The entire matter is summarized by one of the Consultors.

From the documents presented, it was gathered that the Bishop of Arras possessed the reliquary, which had been given to him as a gift by a certain Mr. Heame, residing in Boningues-les-Ardres. This Mr. Heame asserted that he had inherited the reliquary by inheritance from his father, John Francis Heame, a priest of Saint Peter in Lyons, who had died in the year 1818, and who had repeatedly testified that the reliquary had belonged to Saint Francis of Sales; and that, while he did not know how this reliquary had come into the hands of his father, he could not doubt the truth of the matter, given the virtues he had observed.

Furthermore, a letter from the Bishop of Annecy, dated November 14, 1840, addressed to the Most Reverend Bishop of Arras, indicated that the aforementioned Father Francis Heame had received, in the year 1791, a reliquary preserved in the first monastery, from a certain JYloniali, who was visiting. This information came from a Canon of Lyons, who had been one of Father Heame's vicars while he was serving as a priest.

Finally, there was the testimony of a certain woman, skilled in this art, who stated that the reliquary appeared to be of the age of the sixteenth century.

In light of these matters, the Consultor (1) considered it necessary to inquire whether these documents were sufficient to establish the certainty that Benedict XIV, in *De Serv. Dei Beati*, book 4, page 2, and others, assert is necessary in rendering judgment regarding the identity of relics; and furthermore, that with the Apostolic approval of Ulffius and the Rites of

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Philip, Canon Cossa.

[*Latin ed. p. 104*]

104 ATREBATEN. It is a matter of greater importance than the approval of Bishops, a series of valid proofs is required, as Benedict XIV himself demonstrates therein. Having considered these documents, the Consultor asserted that these two [points] must consist of moral certainty: namely, 1. That the shroud was transmitted from a nun of San Francisco; 2. That, in truth, it has always remained with various possessors. Regarding the first point, the conjecture was simple, although very probable, that this garment of St. Francis was found among the nuns, of whose institute he was the founder. This conjecture gained weight from the testimony of the aforementioned skilled woman, who asserted that the shroud had been made in that era, while the Saint was still alive. As for the second point, there existed a series of witnesses whose testimony reached us through the nun: for the nun had given the shroud to Giovanni Francesco Heame, who left it to his nephew, from whom the Bishop, the advocate, had received it. However, the Consultor observed that all these proofs were based on the act of that nun, which, moreover, was based on hearsay, or rather, on the testimony of Heame, who stated that he had received the shroud from the nun, believing it to be of St. Francis, and from whom all these [witnesses] derived their knowledge, namely, the Canon of Lyons, who was his vicar, or his nephew; all of whom corroborated the frequently mentioned testimony of Heame. Therefore, in our case, the entire matter was being conducted based on the testimony of one person, whereas, according to the rules of critical analysis, the affirmation of the same thing by multiple witnesses, received from one person, does not merit greater credibility than that one person. Therefore, the Consultor concluded that, indeed, it is evident that Heame was endowed with learning and integrity, and that he used diligence to ascertain the identity of this shroud and to communicate it to others, especially since he himself carried it with him to various regions during difficult times for the Republic; nevertheless, such a proof is not sufficient; because we are not dealing with approved relics, but with relics that are now being examined for the first time; therefore, it does not establish the identity of the relic in this case. This opinion was confirmed by the response of the Sacred Congregation, related by Benedict XIV in the aforementioned work, Book 4, Part 2, chapter 25. In this passage, the Pope recounts what was decided in a certain case in Fano, when he himself was holding the office of Promoter of the Faith, namely:

[*Latin ed. p. 105*]

ATREBATEN. In the monastery of the nuns of Saint Theresa in that city, a mitre was preserved, said to be that of Saint Pius V, as well as a garment, said to be that of Saint Felix of Cantalice. The bishop inquired whether he

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could permit the mitre and garment to be displayed for public veneration, and a negative response was given, as can be gathered from a decree issued on July 13, 1709. The entire proof of identity was derived from the testimony of a certain Sister Agatha Catherine, who was ninety years old. After being duly questioned under oath, she stated that from her tender years she had been educated in the house of Rusticucci, before proceeding to Fano to take her religious vows; and that in the same house of Rusticucci, she had seen the mitre of Blessed Pius V and the aforementioned garment preserved with great reverence; and that the mitre and garment which were in the house of Rusticucci were those which were found in her monastery of Saint Theresa. Furthermore, although the testimony was plausible and supported by other probable conjectures, both because of the familiarity and blood relationship that existed between Saint Pius V and Cardinal Jerome Rusticucci, and because the same Cardinal, with a pious devotion, venerated Saint Felix of Cantalice, so that after his death he took care to keep a part of his garments with him, nevertheless, this single testimony of a pious and religious woman, even though supported by other circumstances, was not considered sufficient to establish that proof which is necessary in order that the relics may be exposed for public worship. Therefore, since the bishop's request for a response regarding the identity of the aforementioned relics received a negative answer, in which the sworn witness had testified about the private veneration shown to those same relics at a time when scarcely sixty years had passed since the death of those Saints, the Consultor argued that this matter was even more pertinent in the present case; since almost two centuries had passed since the death of Saint Francis, which occurred on December 28, 1622, until the year 1791, when the nun donated this supposed relic; of which, however, no witness had been present, nor had been sworn to attest to its authenticity. Nor did the response seem to be an obstacle, since no one of those to whom the supposed relic had been offered for veneration during a period of twenty-two years had doubted its authenticity; for this simple persuasion and acquiescence of the mind, which arose from good faith, was not...

[*Latin ed. p. 106*]

106 ATREBATEN. Which, among the signs [indicating authenticity], is counted towards confirming the genuineness of relics, unless it be merely for the veneration of a presumed relic, and whether the invocation of St. Francis, who wrought wondrous works, would have occurred. In this case, it would be necessary to say that the matter is definitively settled, if the testimony of a divine intervention had supported the existing testimonies. FROM THE COLLEGES: I. Concerning the judgment of a presumed relic, which does not claim at least public and memorable veneration for itself, the Holy See does not accept that proof which generates probability, and indeed a grave probability, of the genuineness of said presumed relic;

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however, it does not constitute moral certainty (1). II. In the present case, however, from the documents presented, it cannot be conclusively proven that the presumed relic was a genuine relic of St. Francis of Sales. ORDER OF PREACHERS. TO THE CONGREGATION OF THE MOST HOLY ROSARY. On April 11, 1864. DECREE. "Since the Sacred Congregation for Indulgences and Sacred Relics declared, through a Decree dated August 19, 1747, approved and confirmed by His Holiness Pope Benedict XIV on the 20th day of the aforementioned month, that the Sodalities of the Most Holy Rosary, erected without the knowledge of the General of the Order of Preachers, are granted Indulgences in the Apostolic Brief (1). When we say moral certainty, we understand it in a strict and true sense. It is indeed known that such an expression has been used, whereby something is said to be morally certain, when no probable reason occurs to the mind for thinking the opposite. However, this is rather a certain acquiescence of the mind, with which we constantly use in our daily life; but it is not true moral certainty, which cannot always be had. For any certainty, whether it be based on moral reasons, or whether it be based on the laws of nature, or whether it be based on metaphysical principles, unless it excludes the possibility of the opposite, it will never be certainty, but rather a greater or lesser probability of the thing."

[*Latin ed. p. 107*]

OF THE ORDER OF PREACHERS. 107 Although they do not explicitly rejoice in this, nevertheless, more and more Bishops in their own dioceses are still establishing Sodalities under the title of the Most Holy Rosary, with the force of Apostolic privileges, which they obtain in general, namely, the power to establish Sodalities of whatever title and invocation (1); and therefore, the current Master General of this Order of Preachers proposed a question to be answered by the same Sacred Congregation of Indulgences. "Whether, without express mention of derogation of the privilege granted to the aforementioned Order, and solely by the force of a general communication of Indulgences enjoyed by the Archiconfraternities of the City, can Indulgences be granted to Confraternities which are established in any diocese under the same titles by the Ordinary; and whether Societies under the title of the Most Holy Rosary, not established by the Master of the Order of Preachers, can enjoy and avail themselves of the Indulgences granted to this Society." "When the aforementioned question was duly discussed in the Congregation held on February 29, 1864, in the Vatican Apostolic Palace, the Fathers considered it necessary to respond (1) The brief formula by which the Apostolic See grants to Bishops the power to establish Sodalities, is of the following tenor: "Pius P. IX. Venerable Brother, Greetings and Apostolic Benediction. We, wishing to enrich those pious Confraternities of the faithful with the sacred benefits of Indulgences, of which We have willed to be dispensers, so that their members may, with greater fruit in

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the Lord, fulfill the works of Christian piety, and since, as you have explained to Us, Venerable Brother, it is very much your desire that you may be authorized to grant all Indulgences to both male and female Christian Confraternities which you canonically establish throughout your diocese, which are enjoyed by the Archiconfraternities under the same titles of our beloved City, We have wished to comply with these your pious desires, as much as We can in the Lord. Wherefore, confident in the mercy of Almighty God, and in the authority of the Apostles Peter and Paul, We grant to you, Venerable Brother, by these presents, for the next five years only, that you may freely and lawfully communicate to all and each plenary and partial Indulgences and other spiritual graces, which have been respectively granted to the Archiconfraternities under the same titles in the City, and to others by this Holy Apostolic See, to Confraternities of this kind, both in parish churches and in other churches of your city and diocese, which you have erected or are erecting, and also to grant to the respective Rectors for the time being the power to enroll the faithful in the same pious Confraternities, and also to bless the Scapulars, or Rosaries, and Crowns for the members. Not withstanding Our and the Apostolic Chancery's rule regarding not granting Indulgences to laymen, and other Apostolic Constitutions and Ordinances, and other contrary things, etc." Subsequently, in this formula, the Confraternity of the Most Holy Rosary will be expressly excepted.

[*Latin ed. p. 108*]

108 OF THE ORDER OF PREACHERS. This was provided through a response from this Holy Congregation on August 19, 1747, confirmed by Benedict XIV on the 26th of that month. Subsequently, through me, the undersigned, a report was presented to His Most Holy Lord Pope Pius IX in an audience on April 11 of the same year. His Holiness graciously confirmed the opinion of the Most Eminent Fathers. Although, by the aforementioned decree of Benedict XIV, it was stipulated that, in the future, no Confraternities of the Most Holy Rosary should be established without the consultation of the General Superior of the Order of Preachers, by virtue of an Apostolic Brief generally granted, nevertheless, so that the fervor of devotion may not diminish, but rather the piety of the members may increase and flourish, His Holiness, by his own initiative and with the fullness of his power, validated and declared valid those Confraternities thus far established, provided that nothing else obstructs, notwithstanding any contrary provisions, even those worthy of special mention. Moreover, His Most Holy Lord, with the same fullness of power, willed and expressly ordered that, in the future, Confraternities of the Most Holy Rosary should be established only according to the form of the decree of Benedict XIV (1), with all other legally required provisions observed. Given in Rome, from the Secretariat of the Holy Congregation for Indulgences and Sacred Relics, on April 11, 1864. Fr. ANTONIUS M. Card. PANEBIANCO, Prefect.

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ARCHPRIEST. PHILLINYALLI, Substitute.

(1) The following is the text of the judgment decree. CONSTANCE. "Since experience has shown that certain Confraternities of the Most Holy Rosary have been established solely by ordinary authority, without the consultation of the General Superior of the Order of Preachers, and that an Apostolic Brief with Indulgences, customarily granted to any canonically erected or to be erected Confraternity, has been issued for them, certain individuals outside the City, and especially certain ecclesiastical men distinguished by their nobility of birth and probity of character from the diocese of Constance, have rightly doubted whether such Confraternities can be considered canonical and whether they truly subsist. For their sake, two doubts were presented to the Holy Congregation for Indulgences and Sacred Relics: 1. If a Confraternity of the Most Holy Rosary is established by an Ordinary without the knowledge of the General Superior of the Order of Preachers, do the members thereby enjoy the Indulgences expressly granted to them in the aforementioned Apostolic Brief? And, to the extent that the answer is affirmative: 2. Do they also enjoy other Indulgences granted in the aforementioned Apostolic Brief, which are not expressly mentioned, but which are known to have been granted to other members of the Most Holy Rosary by various Popes, such as on monthly Sundays or on other days? To these doubts, the Holy Congregation, after serious and mature deliberation, considered it necessary to respond on August 19, 1747, as follows: To both..."

[*Latin ed. p. 109*]

109 FROM THE HOLY CONGREGATION OF RITES. REGARDING THE CANONIZATION OF THE BLESSED LEONARD OF THE PORT OF MAURITIUS, A MISSIONARY OF THE APOSTOLIC ORDER OF MINOR FRATERS OF SAINT FRANCIS OF STRICT OBSERVANCE, IN THE SACRED RECESS OF SAINT BONAVENTURE, CONCERNING A DOUBT: Whether it is established that a miracle of instantaneous and perfect healing occurred in the case of Elizabeth Boutourò, who suffered from a scirrhous tumor of the right breast, which had secretly turned into cancer, with the complete restoration of her strength, and whether this occurred in the case and to the effect of which we are speaking? DECREE. "The Blessed Leonard of the Port of Mauritius was indeed a man powerful in work and word before God and all the people. Clad in the poverty of the Seraphic Saint Francis, and endowed with a spirit of humility, for many years he traversed cities and castles, beginning from this Alma Urbe, preaching the Gospel and repentance for the remission of sins. He rightly fulfilled this ministry; he broke the hearts of the erring; he brought light of truth to those sitting in darkness; he was ready to help the poor; he brought divine and human aid to the sick; he offered consolation to the afflicted; in the year of the Lord, 'No.' Concerning all

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of these matters, I, the undersigned Secretary of the aforementioned Holy Congregation, reported them on the 26th of the aforementioned month to His Holiness, our Most Holy Father, Pope XIV. His Holiness, with a benevolent approval, confirmed this himself and his vote. However, so that the fervor of such confraternities, erected without consultation with the same Superior General, may not diminish, but rather that the devotion of these brothers and associates may rather increase, all and each of the confraternities of the Most Holy Rosary, erected in the aforementioned diocese of Constance, which have been established up to now without the knowledge of the Superior General of the Order of Preachers, are hereby validated by a Motu Proprio, and declared to be valid, and moreover, desiring to favor the people of the aforementioned diocese of Constance, even at the humble request of the same Superior General of the Order of Preachers, these confraternities, in addition to the Indulgences expressly stated in their respective briefs, shall also enjoy all and each of the other confraternities of the Most Holy Rosary, according to the form of the Constitution."

[*Latin ed. p. 110*]

In ROMA, or ALBANY, it was received, and the day of reckoning was announced. Afterwards, the laborer, exhausted by his labors, found solace in the kiss of the Lord. But Leonard, raised to the heavens by the right hand of God, began to shine with the glory of miracles; which, after examination of virtues, were duly approved by the Congregation of Sacred Rites, and by the Supreme Pontiff Pius VI, were declared, in memory, among the Blessed. But when he, while still acting on earth, greatly desired that the doctrine concerning the Immaculate Conception of the Virgin Mother of God be dogmatically defined, therefore, the wise providence of God arranged that, after honors were paid to Blessed Leonard before the altar, and after that very extensive definition of the dogma, the faithful should follow him with even greater devotion, renewed by new miracles. And although, since the year one thousand eight hundred and thirty-nine, the same Congregation of Sacred Rites had examined two miracles then proposed; it happened that only one was approved by the Supreme Pontiff Gregory XVI, and on the sixteenth day before the Kalends of April, it was decreed: "That the first of the proposed miracles is of the third kind, namely, the sudden and perfect healing of Laura Cardelli, a virgin, from a chronic hemorrhage with pure blood, along with the complete restoration of her health." The other miracle, therefore, was desired, so that a decree for canonization could be reached. This was accomplished by Almighty God, at the request of Leonard, in the city of Constantinopla, on the day of Saint Pius V, June 28, 1569, and, although "among the desirable," etc., it was canonically established by the Apostolic See, the Holy See graciously granted indulgences. However, in order that any doubt, and any abuse, or occasion for annoyance or disturbance, may

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be completely removed, the same Most Holy Lord, by the full power of the Apostolic See, willed and expressly commanded that no other confraternities or societies of the Most Holy Rosary be established, unless the necessary permissions have first been requested and obtained, according to the form prescribed by Saint Pius V in the aforementioned Brief, from the Reverend Order of Preachers, at that time existing, by means of a faculty letter, as was otherwise resolved by the Congregation of Sacred Rites on April 9, 1661, and by the General Auditor of the Holy Apostolic Chamber in a similar case in the year 1603, by a definitive judgment. Furthermore, the aforementioned General, for the erection of such confraternities, shall issue letters to priests of his Order, or, where such a convent does not exist, to other ecclesiastical persons, or to secular canons, even with the approval of the Bishop, and these letters shall be issued only with the consent of the Ordinary, and with all other things that are usually observed in such erections, according to the Apostolic Constitutions, and shall be observed."

F. R. I. Card. PORTOCABRERO, Prefect, A. M. Erba, Apostolic Secretary.

[*Latin ed. p. 111*]

ROME OR ALBANUM. He, in order to declare the sanctity of his servants even in distant regions, and among the very infidels. Therefore, having been endowed with Apostolic authority, and after a thorough investigation, this miracle was presented for examination three times before the Congregation of Sacred Rites: first, in the preparatory meeting held on the ninth of September of the year 1865, in the halls of the Most Reverend Cardinal Ludovici Altieri, Bishop of Albanum, and Relator of the Cause; then, in the preparatory assembly of the Most Reverend Cardinals presiding over the Sacred Rites, convened in the Vatican Palace on the fourth of April of the following year; and finally, in the General Assembly held in the same Vatican Palace on the sixth of July of that same year, where, before the Most Holy Pope Pius IX, both consultants and the Most Reverend Cardinals presented their own opinions. After hearing these, the Most Holy Pope decided to pronounce his final judgment, and he urged all present to join him in prayer, so that he might obtain the illumination of the Divine Spirit.

"Indeed, on this day, when the faithful commemorate the anniversary of the dedication of the Basilica of Saint Mary of the Angels at Portiuncula, and are accustomed to obtain a plenary indulgence, his Holiness, in order to set an example to the faithful in this most pious practice, after having offered the Eucharistic Sacrifice devoutly in his private oratory, went to this church, which is sacred to the stigmata of Saint Francis. There, in his presence, seated on the throne, the Most Reverend Cardinal Constantinus Patrizi, Bishop of Portus and Saint Rufina, Prefect of the Congregation of Sacred Rites, together with the Most Reverend Cardinal Ludovici Altieri, Bishop of Albanum, Relator of the Cause, along with the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned

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Secretary, were present, when he declared: 'It is established that a miracle occurred, through the intercession of the Blessed Leonardo; namely, the instantaneous and perfect healing of Elizabeth Bouzourò from a scirrhous tumor of the right breast, which was turning into cancer, with the complete restoration of her strength.' "

He ordered that this decree be made public and recorded in the acts of the Congregation of Sacred Rites on the fourth of the Kalends of August, in the year 1866.

C. Episcopus Port. et S. Rufinae.

Cardinal Patrizi, Prefect of the Sacred Rites.

(Seal of D. Buonoloni, Secretary of the Sacred Rites).

[*Latin ed. p. 112*]

112 ROME, OR ALEXANDRIA. CONCERNING THE CANONIZATION OF BLESSED PAUL OF THE CROSS, FOUNDER OF THE CONGREGATION OF CLERICS OF THE MOST HOLY CROSS AND PASSION OF OUR LORD JESUS CHRIST, REGARDING THE QUESTION OF WHETHER AND ABOUT WHICH MIRACLES IT IS ESTABLISHED, IN THE CASE AND FOR THE EFFECT OF WHICH THIS IS CONCERNED. DECREE. "The Blessed Paul of the Cross, ever armed with the thought of Christ's Passion, was, while he lived, attached to the faithful, striving to incite them to abandon sins and to live the remainder of their lives according to the will of God. Therefore, knowing nothing else but Jesus Christ and this Christ crucified, he, armed with the banner of the Cross, together with his disciples of the Congregation of the Passion of Christ, of which he was the Founder, traversed cities, villages, and hamlets, declaring war against the powers of darkness, and exhorting all, by word and example, to renounce impiety and worldly desires, to embrace the Cross of Christ, to follow in his footsteps, and to share in his sufferings, awaiting the blessed revelation of his glory. After this good soldier of Christ, having drawn a multitude of men from the servitude of the devil and enrolled them in the ranks of the children of God, and bearing with him the fruits of his evangelical labors, entered with joy into the kingdom of the Lord. The fame of his sanctity, spread everywhere on account of the sweetest fragrance of virtues and the abundance of miracles, by which God willed to confirm him, led to a most rigorous examination of these virtues, and then of the miracles, by the Congregation of Sacred Rites. These having been most clearly demonstrated, the Most Holy Pope Pius IX inscribed Paul of the Cross in the album of the Blessed on the first of May of the year one thousand eight hundred and fifty-three. And after the altar, honors are paid to him."

[*Latin ed. p. 113*]

ROME OR ALEXANDRIA, AND AQUA. 113. The glory of God shone so

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brightly through the power of miracles upon Blessed Paul, that all might behold that sublime glory which He granted to be enjoyed in heaven by this faithful soul. Therefore, when two miracles were proposed for examination by the Congregation of Sacred Rites, a triple investigation was undertaken, namely, in the Preliminary Assembly at the house of the Most Reverend Cardinal Constantino Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, on the eighteenth day before the Kalends of December in the year 1865, having been gathered together; then in the Preparatory Assembly of the Most Reverend Cardinals presiding over the Sacred Rites in the Apostolic Palace at the Vatican on the Ides of May of the following year, having been assembled; and finally, in the general Assembly in the same Apostolic Palace, before the Most Holy Lord, on the day before the Kalends of August of the same year, where both Consultors and the Most Reverend Fathers Cardinals expressed their opinions. After hearing all, the Most Blessed Father considered it prudent to postpone his judgment further, "so that, in the meantime, through fervent prayers, He might seek light from the Father of Lights and assistance." Finally, on that Sunday, the fourteenth day after Pentecost, after having devoutly celebrated the divine mysteries in his private chapel, he summoned to him in the grand hall of the Vatican Palace the Most Reverend Cardinal Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites and Relator of the Cause, together with the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, he declared: "It is established that two miracles have occurred, through the intercession of Blessed Paul, granted by God; namely, the first, the multiplication of wheat in the recess of the Congregation of Charity at the Forum Cassii; and the second, the perfect and complete healing of Rosa d'Alena from a cancerous tumor." He ordered that this decree be made public and recorded in the Acts of the Congregation of Sacred Rites, on the seventh day before the Kalends of September in the year 1866.

C. Bishop of Porto and S. Rufina, Cardinal Patrizi, Prefect of S. R. C.

Signed, D. Bartolini, R. C., Secretary.

Acts, volume 6, page 14.

[*Latin ed. p. 114*]

114 FROM THE HOLY CONGREGATION FOR ECCLESIASTICAL IMMUNITY. REGARDING THE REQUEST OF A MILITARY MAN. Dated June 22, 1843. Summary of the case. Titius, having solemnly made his vows to God in the regular Order N., and having received the lesser orders, later found the regular discipline to be excessively burdensome, and repeatedly requested that he be granted the grace, which is called secularization; and indeed, he obtained it, as follows: "After a report on the aforementioned request was presented to His Holiness Pope Gregory XVI. by me, the un-

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dersigned Secretary of the Holy Congregation for Regular Discipline," the Most Holy Father, "having carefully considered the information, and the vote of the Most Eminent Cardinal Bishop of Imola, as well as that of the Reverend Procurator General of the Order..., and having considered the particular circumstances present in this case, since the petitioner has not had recourse to another Holy Congregation for the same purpose, otherwise under penalties of nullity, and according to the decrees of Innocent XI, June 4, 1692, and Clement XIII, April 15, 1768, benignly granted the grace of perpetual secularization, at the discretion and prudence of the aforementioned Most Eminent Bishop, who can judge whether the truth of what has been presented to him is to be believed, so that the petitioner may lawfully reside in the world, outside the cloister of his religious Order, in the habit of a cleric, or in a suitable secular attire, for as long as he lives, while nevertheless preserving the essential vows of his religious profession, which shall always, as far as is convenient in this situation, remain in full force; and that he retain, as a constant reminder of this obligation, some sign of his regular habit, and that he fully observe obedience and the jurisdiction of the Ordinary in whose diocese or territory he happens to reside, in accordance with the solemn vow of obedience, and that he be obliged to present this Indult to the aforementioned authorities, notwithstanding any Apostolic regulations to the contrary, etc." Approximately one year after obtaining this Indult, Titius requested from His Holiness permission to join the ranks of the Pontifical Army.

[*Latin ed. p. 115*]

PETITION OF THE MILITARY CINGOLI. 115. Those who belong to the military division, commonly known as Carabinieri, present their case, citing both poverty and the fact that their vows do not preclude military service; and, for their part, they send a messenger to anyone possessing personal immunity. After prayers were submitted to the Sacred Congregation for Immunity, an examination of this matter was instituted. Synodal discussion. It was observed that, by virtue of his office, the individual in question was not required to fulfill the Indult of Secularization granted to those who have solemnly professed vows: for it merely grants the faculty of living outside the cloister, while the vows of chastity, poverty, and obedience remain in full force, and which the local Bishop, Titius, was obligated to observe in a particular manner. Furthermore, such observance of vows proved to be very difficult in that stage of military life which Titius desired to undertake. For a special obligation rested upon him, even though he lived outside the cloister, to constantly pursue the path of perfection, and to remove from himself all dangers of violating the faith given to God. Although there have been holy men among the military, as history recounts of Mauritius and Eustachius; nevertheless, a Religious who has solemnly professed vows will not be able to cultivate virtue in that state without a special miracle,

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especially when he seeks the military cingoli solely due to poverty, and moreover, in the Indult obtained for living outside the cloister, a special obligation of obedience to his own Bishop has been declared. After these considerations, certain observations were made regarding the privileges of the forum and canon, which privileges, while simple clerics may lose in certain circumstances, are not lost by those who are bound by solemn vows. Regarding the privilege of the forum, the example of the case of Anagnina, concerning the forum or immunity, of June 6, 1826, was cited. In that case, a layperson who had solemnly professed vows was granted the Indult of Secularization, and he had devoted himself to a sordid trade; but having contracted a debt, and being unable to pay, he was brought before the lay forum and condemned to undergo secular penalties. An appeal was made against this sentence to a higher tribunal; and there was doubt concerning the validity of the prior sentence due to a lack of jurisdiction. And the case was presented before the Sacred Congregation for Immunity, with the question: "Whether Joseph... Professed of the Order (N.)..."

[*Latin ed. p. 116*]

116. REGARDING THE REQUEST FOR MILITARY STATUS. "A cleric who has been secularized enjoys the privilege of the forum even in the case concerning which we are speaking." The response came: affirmative, and further: "It is to be remembered that the Bishop should urge Joseph... to proceed in a manner befitting his state, and to abstain from any art that is sordid and unbecoming." Furthermore, it was noted that he who bears the name of a soldier is subject to military authority, and that the privilege of the forum can easily be violated. With these and other considerations, the proposal of the Sacred Congregation was to pose a question: "Should approval be given to the request by which a cleric, having professed... and being secularized, seeks to be considered in the status of a military man?" RESOLUTION. – The Sacred Congregation for the Eclesiastical Immunities, having examined the case on August 22, 1843, decided to respond: negatively. FROM THE ABOVE, WE GATHER: I. Through the indult of secularization, which is sometimes granted by the Holy See, solemn vows are not fulfilled. II. Therefore, the principal effects of such an Indult are the commutation of the cloister with one's own home, and the commutation of the Superior to whom obedience is due. III. Consequently, one who has made such vows remains distinct from the Christian people by reason of the dignity which he has acquired before God and the Church by pronouncing those vows; hence, he does not lose the privilege of the forum. IV. Since this is the case, neither military status is appropriate, nor is an office involving sordid and unbecoming activities.

[*Latin ed. p. 117*]

117. EXHUMATIONS. November 19, 1849, and August 13, 1850. Sum-

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mary of the case. After Titus had tasted a certain preparation that had been prepared for him, and, seized by acute pains, died violently, having been led to believe that he had been given poison by his son, his body was buried. However, upon hearing rumors of poisoning, the Fiscal (prosecutor) considered it his duty to exhume Titus's body, in order to subject it to an examination by experts, so that it might be determined whether a crime had been committed against the body. Since a lay jurisdiction was to be exercised in a sacred place, the Fiscal did not fail to request the necessary permission from the local Bishop for the exhumation of the body, which the Bishop readily granted, being mindful of the authority of the Apostolic See. However (it is unknown how this happened), an error occurred in the granting of permission by the Bishop to the Fiscal regarding the name of the body to be exhumed: for it expressly granted permission to exhume the body of Sempronius, whereas, in fact, the body of Titus was exhumed, and traces of poison were found upon it. Therefore, after the criminal proceedings were completed, Titus's son was found guilty and sentenced to death. This sentence of condemnation has been confirmed several times, and he has appealed to the highest court for a review of the case. Furthermore, his defender argued that ecclesiastical immunity had been violated in two respects: first, because the permission granted to the Fiscal was not for the exhumation of the body of Titus, but of Sempronius; and second, because the Bishop did not issue a protestation in the documents granting such permission, which is prescribed in Chapter 6 of the section "Concerning Homicide" in the book "Concerning Prelates." Such a protestation is also required in the documents by which the Holy See grants such permissions to Bishops (1). (1) The documents by which the permissions are granted to Bishops outside of Italy, in the matter under consideration, are of the following tenor: "Most Reverend Lord, as a brother: 'The course of justice demands that, in churches, or in sacred places, and especially in legal hospitals, an examination be made of those who may have been wounded, perhaps by a crime, or who have already died and are still detained there. For this reason, the Most Holy Father has graciously permitted the Fathers of this Sacred Congregation, who are responsible for ecclesiastical immunity, to grant, at Your discretion and prudence, permission to the officials of the lay court to carry out the aforementioned examinations..."

[*Latin ed. p. 118*]

118. OF PARRICIDE. The Supreme Tribunal, therefore, recognizing itself as incompetent to judge on this matter, which concerns ecclesiastical immunity, referred the case to the Holy Congregation for Immunities, and proposed the following questions: I. "Is ecclesiastical immunity violated by the fact that, due to a mistake in the name, the name 'Sempronius' is written in the document of the Ordinary (having been informed by the Fiscal for the removal from a place of immunity of a certain person named Titus, who

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had been murdered by deceit), instead of the name 'Titus'?" II. "In the case of the omission to protect a station according to the terms of Chapter Praelatis, is ecclesiastical immunity likewise violated?" The Holy Congregation for Immunities, having considered these matters on November 19, 1849, responded negatively to both questions. However, the Defender of the Faith did not agree with this resolution and, in favor of the matter, requested a new hearing; which was granted to him, provided that he present his arguments within twenty days.

A SYNOPTIC DISCUSSION. DEFENSE OF THE MATTER. In order to demonstrate that ecclesiastical immunity was violated in the process of investigation, the Defender of the Faith argued that the body of the deceased should be transferred, with due protection under custody, to a suitable and neighboring place, where the secular court, with the assistance of an ecclesiastical person, could carry out all necessary actions for the examination of the body and the accusation of the guilty, so that all legal procedures could be followed, and thus the crimes could be punished and suppressed without any violation of immunity. Therefore, Your Eminence, or ecclesiastical ministers delegated by Your Eminence, may use the faculty granted to them for three years by the Holy See, and with further safeguards against any irregularity, provided that a canonical protestation, according to the form of Chapter Praelatis, concerning Homicide, is issued by You, or by the aforementioned ecclesiastical delegates. Moreover, if those who are wounded are in such a serious condition that their lives appear to be in imminent danger, and it is necessary to transfer them to a nearby place, Your Eminence may grant the ministers of the secular court the faculty to enter the place of immunity, with a cleric in holy orders appointed by You, as mentioned above, to carry out the examination of the body and the accusation, and to use the findings in the prosecution of the case, with the condition that, in both of these cases, the lay ministers begin the process from the accusation made by the wounded, which, if it concerns a person of the Church, obliges the aforementioned ministers to abstain from further actions. And meanwhile, they pray that all may go well for Your Eminence. Similar faculties are granted to Bishops in the Pontifical territories and throughout Italy.

[*Latin ed. p. 119*]

PARRICIDES! 119. In these cases, the nullity is proven; and it was maintained that two exceptions were indicated: for, by a certain Resolution of the Holy Congregation for the Propagation of the Faith, it was declared that corpses should not be exhumed for the purpose of obtaining information without permission; and it was alleged that the corpse of Titus had been taken from a sacred place by the secular court, without any ecclesiastical permission. For, although the Ordinary had been asked by the Treasury to grant permission to remove the corpse of a certain Sempronius from the

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tomb; nevertheless, since it was not Sempronius, but Titus, whose corpse was actually removed, it was maintained that this had been done without permission. Therefore, the Treasury had violated ecclesiastical immunity. Regarding the second point, it was alleged that, when the Ordinary grants permission to the Treasury to exhume a corpse, in order to prove a crime, or to prevent oneself from being involved in the danger of the penalty of blood, it is necessary that he do so with an express protestation, according to the words of Chapter 6 of the De Homicidis. For all those who, in any way, physically or morally, have participated in the death of another, are considered irregular, Chapter 24 of the De Homicidis. Moreover, Bishops must observe the prescriptions contained in the letters by which such permissions are granted to them. Therefore, it was alleged that, since the rescript obtained from the Treasury was lacking this protestation, and was therefore contrary to law, it should be considered invalid; and therefore, all the acts of the secular court against the accused, in this case, are subject to nullity, because they were performed without due permission.

WHAT WAS BROUGHT FORWARD FROM OFFICE:

On the contrary, it was observed that, in the present case, the error in the name did not invalidate the denial of permission. For, both the Treasury and the Ordinary were solely concerned with the exhumation of the corpse of that person, whose son, N., was accused of poisoning; and therefore, the ambiguity in the name was irrelevant, since the subject and intention were clear. Barbosa de Axiomat. iur. Soccin. ad Regni. 158 and 159 de Regni, diver. Card'. Tusc. ad verbum Error Consul 324 per lot. Rice. Collect. 1496, and S. Rota dec. 447 p. 3 Recen, and elsewhere. Regarding the second point, concerning the omission of the protestation, it was observed that such a protestation must be made, lest the Ecclesiastical authority incur irregularity through lack of caution. But this protestation did not seem to be necessary in the present case.

[*Latin ed. p. 120*]

120 MURDERERS! For the Bishop was not acting against the accused, as is stated in chapter "Praelatis," where it is established: "To Prelates, or to Clerics of any rank, who, concerning their lay malefactors, bring a complaint before the secular judge, seeking that provision be made for them so that such presumption against them may not be presumed in the future, they must expressly protest that they do not intend to seek vengeance or punishment of blood; although, in such a case, punishment of blood ought indeed to be imposed by law, if the judge inflicts death upon them, justice demanding it. Otherwise, if Prelates or Clerics, out of fear (because the judge might proceed to the punishment of blood against their malefactors), dared not make such a complaint, it would give to many an opportunity to

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murder the same, and to freely plunder their goods." And if such a protestation must be issued in all those cases in which a Prelate or Cleric might seem to be cooperating in the punishment of blood, and also this applies to the present case under consideration, it was noted that, by omitting the protestation, in which he affirmed that he did not intend the punishment of blood, the Ordinary has, at most, incurred a fault of irregularity due to a lack of leniency; but it does not follow that the decree is null. With these observations, the question was again proposed under the usual formula of doubt: "Whether one should adhere to, or depart from, the previous decisions in this case."

RESOLUTION. — The Holy Congregation for the Ecclesiastical Immunities and for Jurisdictional Controversies, having the matter under examination, decided on August 13, 1850, to respond: to both, adhering to the previous decisions.

FROM THESE, ONE MAY GATHER THE FOLLOWING:

I. No right whatsoever belongs to secular authority to exhume a corpse from a place of immunity, even though secular authority may seek it, so that public justice may achieve its effect.

II. In granting to Ordinaries the faculty of exercising secular jurisdiction in a place of immunity, while observing the provisions of Apostolic privileges, they must issue a protestation according to the chapter "Praelatis," whenever it may seem that they are cooperating in the punishment of blood when granting such permission.

[*Latin ed. p. 121*]

PARRICIDES. 121 III. Besides the excommunication into which those who violate immunity incur by this very act, it is declared that the acts of the process, by which a place becomes immune, are to be considered invalid (1). IV. In the present case, immunity was not violated because sufficient permission was obtained. (i) Among other resolutions that could be cited, we present the following, which was issued on September 30, 1704, in the case of Oritana, concerning which the following is written in Book 6 of the Letters of the Sacred Congregation for the Holy Office: "In the examination of the process constructed concerning the homicide of Matthaei N., committed in the territory of the castle of Chia by Ioannem Paulum N., detained in the new prisons of the city, the Holy Congregation, on the part of the Sacred Consultors, instituted an inquiry concerning the following doubts: I. "Whether it is established that the recognition of the body of the crime was made in a place of immunity; and to the extent that it is affirmative: II. "Whether the judge incurred excommunication; and to the extent that it is affirmative: III. "Whether the acts performed in the same process by the same judge afterwards are valid, or not, even

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though a declaration was not previously made." The Fathers, after a prior examination of the process, at the mandate of the Holy Congregation, in such cases, compiled the following, and judged as follows: concerning I and II, affirmative; concerning III, the acts consistent with the body of the crime are not sustained."

[*Latin ed. p. 122*]

122 APPENDIX IV. CONCERNING THE DUTY OF BISHOPS TO PROVIDE THEOLOGICAL PREBENDS, AS MENTIONED IN SECTION XIII, WHICH SYNOD WAS HELD IN ROMA IN 1725 TO ESTABLISH A PASTORAL CONSTITUTION FOR ITALY AND ADJACENT ISLANDS. In the aforementioned case, page 81, it is stated concerning the form of the Constitution, namely sections m. <?t seqq., not without considerable discussion, that Pope Benedict XIII, beginning with the Pastoral Constitution, and the Examiners, after careful deliberation, considered whether a Bishop would be compelled, by force of said Constitution, to provide a theological prebend to a person whom the Examiners, with their knowledge, had determined to be more suitable, and to report to the Bishop those whom they had deemed more worthy of being approved, and those whom they had deemed more worthy of being rejected. However, since no Examiners are present to contradict this, and in the theological case of Aversa, the number of candidates for the canonical and penitentiary positions to be provided is entirely sufficient; therefore, the modern Bishop Xaverius Durini, on November 1, 1929, it is believed that, in accordance with the opinion of the Examiners, and because he deems it his right to choose whom he considers most suitable among the approved candidates, this resolution was resolved by the Sacred Congregation. As is customary in matters of teaching, which are often the subject of controversy, and which, through formal legal proceedings, are more likely to resolve the dispute, so that no one is left to seek an oracle, but rather, as an axiom of this Sacred Order, the following interpretation of the rule, which was established at that time by order of the office, is presented: "The specific facts and the dispute are as follows: In the Cathedral of Aversa, when one of the prebends, either the theological, the canonical, or the penitentiary, becomes vacant, the Fiscal Advocate states: "The Fiscal Advocate..."

[*Latin ed. p. 123*]

IX. IV. The Fiscal Court of Aversa, moved by the reading of Holy Scripture with clear words, and in accordance with the Constitution of Benedict XIII, by which We command that the theological and penitential canons be observed in cathedrals and collegiate churches, and desiring to provide a fitting arrangement, We decree concerning the appointment of a Canon of the Penitentiary Order... We ordain that a suitable person be appointed to the theological or penitential canonry, through a formal competition, after

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being declared worthy by the Examiners.

It is the opinion of those learned in the law that the election of a person in this specific case pertains to the Examiners themselves, and thus the Holy Congregation of Salerno has decreed.

The Canon of the Penitentiary Order is assigned to the parish churches, as stated in the library of Ferrara, volume IX, page 1753.

It is understood that the Examiners, after having examined the candidates in the churches, must announce the Canon, judging them according to age, morals, doctrine, prudence, and other suitable qualities, as sanctioned by the Council of Trent.

Furthermore, it is to be noted that, according to Benedict XIV, in his decrees concerning diocesan synods, book 4, the election of a person after the aforementioned Constitution does not pertain to the vacant church, but to the Examiners themselves, as resolved by the Holy Congregation of the Council of Salerno on September 1, 1753.

However, the judgment concerning the greater suitability, or the approval of one over the others, belongs to the Bishop, as clearly demonstrated by the aforementioned Constitution of Benedict XIII.

Indeed, the Pope himself, in the aforementioned Constitution, states that if the Bishop has judged one to be more suitable for the theological sermon, he should choose him.

Furthermore, Benedict XIV, in his encyclical "Cum Illud," § 11, dated December 14, 1742, added that the same law should be observed in the appointment of a penitential canon, and decreed as follows: "After the Examiners have declared those who are worthy, the Bishop, having reserved to himself the election of the person to be appointed, shall choose him."

Therefore, even though the Bishop has reserved to himself the election of the person to be appointed, the Examiners must announce all those who are deemed worthy.

[*Latin ed. p. 124*]

124 APPENDIX IV. eligere nequeat, quem Examinatores, seu Synodus, reprobarunt; attamen eum ex quinque tantum abest, ut electio approbatis praeferre possit, quem Canonici, poenitentiarii ac theologi dignior ipse in Domino tribui existi possit Examinatoribus, et maverit, posthabitis illis, qui maiores negari Episcopis, ut ab hac S. Concilio, aut Congregatione pluries definitum fuerit, Examinatoribus ad Episcopum spectare electionem suffragiorum etiam cuncta numerum, ab retulerunt suffragia. S. Congregatio dignioris inter plures approbatos in concursu, quamvis praebendis iurispatronatus Assisien. bris 1773, Parochialis in 27 Novem - Perusina Parochialis 28 Iulii 7 7 8 1, et in Eortana, Paro- ageretur de eccle- siastici, ideoque ex iuris disposi- chiae 28 Martii 1 8 0 1, §. Huic; quia tione nemini magis quam Episcopo inno- ipsi patrono foret reservatum. Huius, tescere pos-

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sunt mores ac merita ius eligendi magis idoneum rei prostant exempla in Cremonen concurrentium, Barbosa de offic, et erectionis praebendae potest. Martii 1727 relata in Pinnen. Canoni- Episcop. part. 2, alleg. 6 0, theologalis 15* n. 1 0 1, Rota cor. Ansaldo decis. 2 6 9 catus theologalis 15 Decembris n. 6. S. Congregatio in Perusina 28 atque in cit. Pinnen., in qua disce- 1753 Iulii 1781 §. Allegrius. ptato dubio: « An electio ad Cano- » Igitur si electio dignioris inter » nicatum theologalem fieri posset approbatos ad parochiales ecclesias » a Capitulo favore sibi magis b e- pertinet ad Episcopum, non autem » ncvisi inter approbatos in ad Examinatores; » cursu, seu potius praeelectio, et si praebenda con- theologalis, et poenitentiaria eodem » approbatio in eodem concursu conferenda » et collatio privative est modo, quo con- spectet ad Episcopum in casu. » Responsum minime ad vertebatur: Praeelectionem et collationem super spectare doctrina, moribus, aetate, aliisque dotibus necessariis ad munus nem Canonici theologici, amplius vel poeniten- tiarii rite obeundum, spectare ius renuntiandi quot, et quo gradu ad vero Episcopum, spectare ad praesentatioCapitulum, et » Ex his plane elici posse videtur, iuri minus consentaneam esse opinionem gendi bus ad Ferrar, loc. stipra cit. digniorem inter adprobatos Auctoris in addictioniaientis- in formali concursu unius Episcopi electionem Personae ad esse proprium. Ita sane docet R i- dam gantius ad reg. I Cancell.%, 10 n. 3 1, Examinatores. Praeterquam enim in monet S. Canonicatus Congregatio theologalis in 28 rii 1761 §. Episcopus, et in poenitentiariam Pinnen. praefata Februa- poenitentiarii Terraci- quaestio Salernitana 1 praeben- spectare Canonicatu» Septembris minime ad vertebatur 1753, inter

[*Latin ed. p. 125*]

APPENDIX IV. The Bishop and the Examining Prelates. The Bishop, the curia, and the Chapter had the right to elect. Therefore, the Sacred Congregation judged that the Bishop possessed the right to elect someone to the theological and penitentiary position; and that this right also extended to the one whom he himself, among the approved candidates, judged to be more worthy, having given a formal response demonstrating his suitability. The Sacred Congregation clearly indicated that, in accordance with this resolution, the election was to be made by the Bishop. In another case, judged in the city of Urbetana on July 11, 1846, it was decided that, in the absence of a theological position, the Examining Prelates were to be consulted, and that a suitable term was to be given for their testimony; otherwise, the judgment would not belong to the Ordinary, but rather to the Prelates, who would deserve the name of approval, and there were three candidates, whom, for the sake of brevity, we will call Titus, Gaius, and Sempronius. Titus received 53 votes from the Examining Prelates, Gaius received 50 votes, and Sempronius received 47 votes. Regarding the requirements, Titus received 49 votes, Gaius 40, and Sempronius 60. Such doubts frequently arise; and especially in Urbania, on June 23, 1764, in

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Pienna, on September 20, 1760, and in Terracina, or Setina, on the third of the month of September, 1818. Gaius, not agreeing with the judgment of the Examining Prelates, at least concerning the matter of knowledge, appealed to the Sacred Congregation. However, this controversy among the candidates was silenced by a certain person, who, as if to say, "Whether the Bishop possesses the right to elect the one whom he judges to be more worthy among the approved candidates, to whom he himself has given a formal response demonstrating his suitability; or rather, is he obligated to elect the one whom the Examining Prelates, in the same competition, have declared to be more suitable?" The answer is: "Affirmatively, to the first part; negatively, to the second part."

[*Latin ed. p. 126*]

126 APPENDIX IV. The matters had been discussed, and adhering to the vote of the theologians of the City, and more importantly, what was deemed most just and useful for the Church, Caius was approved, and after a decree was issued, he was to provide theological instruction to the same. Therefore, with expeditious Bulls, in favor of the Bishop, the arguments were presented in the discussion. From this, a dispute arose: those aspiring to the position, who wished to acquiesce in the Bishop's judgment, were seen; some, however, were brought forward, and against the Bishop's judgment, they presented questions which were added to the *Acta* of the Holy Congregation of Theology, a harsh and difficult document. The Bishop, having heard this, among other things, stated: "The judgment of the Examiners was correct in substance; however, it was harmful to Caius in that which concerned his knowledge, who clearly obtained the first degree; he had been endowed with many merits, and Caius had used his services in many and difficult matters, and had never been considered *scopus*."

APPENDIX

V. CONCERNING THE MOST REVEREND APOSTOLIC PENITENTIARY REGULATION REGARDING MATRIMONIAL DISPENSATIONS. Vincent de Iustis, in *De Dispensationibus Matrimoniali*, Lib. 4, n. 115, warns: "A dispensation, when neither impediment is removed for that reason; it must be expressed in the petition for dispensation, 'lest that which is falsely alleged be removed, when it truly does not exist; nor that which is true, if it is concealed, or presented in doubt.' From this general observation, we proceed to particular cases, which will be presented in this Appendix."

[*Latin ed. p. 127*]

127 ix v. concerning that which must be expressed in prayers for obtaining a dispensation in the Sacred Penitentiary, to wit, regarding the impediment of affinity, it is desirable to exercise even greater caution, lest an error or ambiguity creep in, which in matters concerning affinity can more easily

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occur and creep in, and it is often added: in the collateral line, in order to exclude the direct line.

Furthermore, it is known that impediments of affinity arise either from a licit marriage, which is firm in practice, or from an illicit one. It is well known that the former, namely, the impediment of affinity arising from a licit marriage, exerts a greater force, binding more strongly than the latter; therefore, when dealing with the impediment of affinity arising from a licit marriage in the direct line, the following is customary: The petitioners, having obtained the proper permission in writing from their own Ordinary, to contract marriage: the same dispensation for affinity extends up to the fourth degree, while the other, by order of the Ordinary, is granted for contracting marriage up to the second degree; hence, suspicion often arises after the dispensation has been implored, concerning the validity of the dispensation and the marriage, whether it is because the matter concerned is affinity arising from a licit or illicit marriage, and whether the grade and line must be precisely determined.

It often happens in the office of the Sacred Penitentiary, that prayers concerning the first degrees of affinity remain suspended, because it is clearly not deplorabile [worthy of lamentation] in such a case, the dispensation is granted.

For in these cases, no other guarantee can be expected from the Sacred Penitentiary, other than the following: I have also said concerning the Holy See, that according to the instruction of His Holiness Benedict XIV, lib. 9, c. 13, if the matter concerns affinity arising from a licit marriage, equally in the direct line, a dispensation is not readily granted, except for very serious reasons, and therefore the Ordinary is advised to use effective and opportune means, which, with zeal for souls, are available to him.

[*Latin ed. p. 128*]

128. If prudence suggests it, and if it is advisable, let the petitioner, concerning impediments arising from consanguinity and affinity, and generally concerning impediments of this nature, state clearly and explicitly the relationship in a direct line from which the dispensation is sought, so that the matter may be properly considered for the salvation of the soul.

A similar case occurred, in which, not concerning the first degree, but concerning the second degree of affinity in a direct line, prayers were offered to the Holy See, and they were clearly and correctly expressed as follows: N. A. 7 requests a dispensation because of a lawful marriage; the same was the response of the Penitentiary Congregation.

Similar cases, although dispensations arising from collateral relationships are not infrequently granted, have occurred, and it is remembered that a dispensation was granted to a brother, or to someone who had been joined to a sister.

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Therefore, prayers are offered to the Penitentiary Congregation concerning a marriage that is impeded by reason of consanguinity, in order to express the first and second degrees of affinity, or, for example, the second degree in a collateral line, so that any danger of a deplorable outcome may be removed; but it will be appropriate if the Ordinary of the place prevents such prayers from being presented.

Therefore, it is useless to present prayers to the Holy See to obtain a dispensation for a marriage that is impeded by reason of consanguinity, if the petitioner has been joined in marriage to a deceased relative, the mother of the petitioner, or, conversely, if the petitioner has been joined in marriage to a deceased relative, the aunt or uncle of the petitioner. Thus, for example, between a stepmother and her stepson, or between a mother-in-law and her son-in-law, and the like.

[*Latin ed. p. 129*]

129 FROM THE SACRED CONGREGATION OF THE COUNCIL. CONCERNING THE QUESTION OF SEPARATION. On February 18th, May 6th, and August 12th, 1865, in Session 24, chapter 1, concerning the cause of nullity, this matter, which consists entirely in the facts, was presented three times before the Sacred Congregation. Considering the need for brevity, we have compiled the following from three positions into a single account. Summary of the facts. After a marriage was celebrated in the year 1848 between Titus and Caius, a noble young woman, in the city of A., which is the homeland of the woman, the spouses departed to the city of B, a foreign nation, where Titus held a public office. For eighteen months, the spouses lived together in the city of B, not without disagreements. Their first child was struck by a fatal illness, and in order to restore the child's health, the spouses returned to Caius's homeland. The husband left his wife pregnant in her parents' home, and returned to his own city of B to perform his duties. Meanwhile, the child died, and a new daughter was born. In the year 1845, the husband returned to his wife's city, wishing to take his wife and daughter with him, but he was reportedly rejected by Caius's parents; a rejection which the parents themselves subsequently denied under oath. After Titus returned to his office, letters were exchanged, in which the husband seemed to be urging his wife to come to the city of B, while the wife, on the contrary, refused to leave, remaining with her daughter in her parents' home, where they were being cared for. Caius was determined that Titus should seek a transfer of his office from the government to the province in which she and her parents resided, and she suggested suitable means by which he could easily achieve this. However, it must be noted that in the year 1851, Caius wrote to her husband, stating that she wished to restore their marital union, to which Titus responded that this was dangerous to

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him, and from that time... (The text is incomplete).

[*Latin ed. p. 130*]

130. THE TORMENTS OF SEPARATION. At the moment when she believed she had reached a decision regarding Alice, as if a definitive union had been established, nevertheless, several difficulties arose in the letter, preventing the proposal from being put into effect. Among other things, she stated that she did not know when she would be able to undertake the union; that, for certain reasons, she needed time for careful reflection, so that even minor difficulties could be easily overcome, lest she later discover that she had proceeded too hastily, and that this would render her worthless; that she could not, in any way, return to the home of her parents from whom she had been rejected; that it was necessary for first love to be rekindled; all of which required careful reflection, and therefore, the time for carrying out the union could not be determined. Furthermore, there were expressions in the letter that seemed to indicate, beneath the surface of the words, that she both desired and did not desire to carry out the aforementioned union. Moreover, there was discussion about a little girl, whom the wife could not send to Bagnols for medical treatment, due to the expenses, which Titus claimed he could not afford. The wife sympathized with her husband, acknowledging that she would have to incur greater expenses in caring for her health. She expressed a great love for the little girl, whose memory was constantly stirred by the presence of another child of the same age, in a family that she frequented. Finally, the letter concluded with words in which she expressed her hope of restoring a life of companionship with her husband. Upon receiving this letter, Alice replied joyfully, stating that she had clearly seen in it that she was dealing with a truly devoted man, and that the union about which they had spoken was indeed possible. In the year 1853, Alice promised her husband that she would travel to the city of B. the following spring, but this promise did not come to fruition. Eventually, it happened that the husband was appointed to a new position and sent to the province where Alice resided; however, marital relations were not restored. Furthermore, from several letters written by the woman to Titus, which Titus himself presented in her favor before the Sacred Congregation, it was clearly evident that: I. the woman had shown a love for her husband, without a doubt, from the time of their separation, that is, from the year 1844, until at least the year 1858; II. she did not, by any means, despise her husband, as evidenced by numerous indications; III. indeed, there were letters in which the woman rebuked her husband for his concerns regarding his wife.

[*Latin ed. p. 131*]

SEPARATIONIS CAUSAE. 131. Quae res, saltem apparenter, numquam ab eo demonstrata fuerunt: IV. Mulier videretur perpetuo animi anxietate

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et suspicione affixa esse de vera voluntate viri de restituendo consortium maritale: V. Nec desit epistola, qua uxor Titip exprobrabat molestias, quas patiens fuerat ab ipso initio matrimonii. Contra, ex epistolis viri ad mulierem missis, quarum tantum tres hic proponuntur, clarius apparebat: I. Virum maxime cupisse apud se habere filiam suam: II. Non idem sincerum desiderium ostendisse habendi apud se uxorem: III. Quin etiam, unio, de qua semper sermo erat in epistolis, ex parte viri ita considerari videbatur (si ad substantiam respicias), ut si de novo matrimonio ineundo ageretur, vel de consortio iterum instaurando, quod fuisset dissociatum ope iudicialis sententiae ex culpa mulieris: IV. Virum per plures annos denegasse uxori et filiae congruam sustentationem et fructus dotis, quamvis mulier pecunias optare eodem modo significaret, praesertim pro sua et filiae valetudine curanda. Praeterea, in iis epistolis non deerant expressiones, quibus vir querēbatur de absentia mulieris, quam in culpam mulieris vertebat. Haec omnia eruuntur sive ex aperta ratione dicendi, sive ex sententia sub verborum involucro abscondita. Circa annum 1860, mores Caiae suspicionem, et quidem gravem, de sua vitae honestate induxerunt, quas suspiciones ipsimet Caiae parentes Titio patefecerunt. Nescimus quid Titius responderit, nihil tamen agere se visum est. Res deinde in peius coeperunt prolabi, ita ut Caia anno 1860 inopinato nocturno tempore fugam faceret, et extra urbem sola cum auriga currum agente discederet; et in urbem rediens, numquam domui patris regressa est, sed quamdam malae famae domum habitare coepit. Sufficit audire testimonium matris, quae in iudicium vocata deponere non dubitavit, ea quae sequuntur, nempe: filiam suam, quattuordecim annis, quibus seiuncta a viro in sua domo habitavit, bene satis se gessisse: postremis duobus annis se exacerbatum esse ob rumores, qui diffundebantur: deinde res male procedere, et in peius prolabi: rubore suffusam se fateri debere, inter cetera, quamdam faedus scandalosam consuetudinem, quin complicem nominaret, praeter alias externas.

[*Latin ed. p. 132*]

132. OF THE SEPARATION OF HUSBAND AND WIFE. Customs, concerning soldiers. Thus, the woman was considered among the harlots, and it was said that she was a scandal to her neighbors. With this manner of living, she alienated the hearts of all, until, pressed by poverty, she presented a petition to the Episcopal Curia in which Titius resided, requesting that a divorce be declared due to the cruelties and abandonment suffered at the hands of Titius, so that Titius, who was receiving the fruits of the dowry, would be compelled to provide for her sustenance. The man, in turn, brought a suit against the woman, requesting a separation himself, and simultaneously demanded that the separation be declared to have occurred due to the woman's fault. After hearing both parties in a regular trial, the tribunal issued a final judgment in favor of the man, deciding that

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the marriage should be separated, with the clause that the separation was solely due to the fault of Caia. The woman appealed to the Sacred Congregation of the Council (S. C. C.), and, observing the usual procedures, the matter was debated as to whether this judgment should be confirmed or overturned. A summary of the debate: DEFENSE OF THE MAN. — Titius defended his case through an Advocate, whom he appointed in the city, and of which we have only extracted some points. The Defender argued that the aforementioned judgment should be confirmed for three reasons: namely, because of the woman's adultery, because of the woman's malicious abandonment, and because of [reasons] that would be detrimental to the civil honor of Titius, if the separation were not decreed. With regard to adultery, the Defender of Titius pointed out in the present trial that the matter was not being considered for the punishment of the crime, but for the purpose of obtaining the separation of the wife. Indeed, even slight suspicions are considered sufficient for this purpose, to declare that adultery has occurred, as Sanchez de Matr. / . 1 0 disp. 12 n. 44 states, and as Cosci de Separ. Tori p. 2 c. 14 n. 1 et seqq. wrote, in number 7: "that it proceeds even more readily, when it is not a criminal matter" for punishment, but for the effect of the separation of the wife, Rot. dec. 818 » n. 3 par. 18 tom. 2 recen. - ibi - where it is not a matter of adulterers "criminally for the purpose of inflicting punishment on the adulterer, but only civilly for the separation, although the matter may be grave and difficult," nevertheless, "all Doctors agree that lighter proofs are sufficient, and that for this purpose, the law of adultery requires proof."

[*Latin ed. p. 133*]

SEPARATIONIS TORI. 133. "Certain circumstances are admitted through conjectures, presumptions, and supporting evidence, such as 'the weight of the flour,' etc." Furthermore, in the present case, not only light, but very serious conjectures and indications were present, which convinced everyone that adultery had occurred. For Caia was numbered among the prostitutes; she was said by witnesses to be a scandal to the neighborhood; she indulged in customs with soldiers, all of which Caia's own mother did not hesitate to confirm in court. Proceeding to demonstrate the malicious abandonment of the marriage, the Orator sought to show, through correspondence, that the man had used all means possible to induce his wife to resume marital relations; he contended that he had demonstrated not only that the man had repeatedly called his wife to restore the union, but also that he had descended to actions that degraded his dignity in order to achieve this union: the woman, on the other hand, always resisted, promising the union at one time and denying it at another. Finally, he argued that it should no longer be permitted for the marital union to exist between spouses, for this would be to the greatest detriment of the civil honor of the man due to the woman's reprehensible conduct.

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Moreover, the Defender continued, the little girl, who had returned to her father, lamented and wept over her mother's conduct: and the corruption of youth is most to be feared if the mother were to return to the home. This, even the pagans understood. We have titles in the Pandects and in the Code concerning the education of children, which carefully state that the greatest care must be taken regarding the morals of young people, and that all those who could endanger the morals of the children must be kept away from their education. Thus, in L. 5 ff., it is stated: "If it is disputed where the child should reside or be educated, and the cause is known, it is necessary for the President to decide. In the investigation of the cause, those who could endanger the chastity of the young person must be avoided." The authors agree with this doctrine: Surdus de Alimentis, title i, question 13, wrote: "What is said of the mother who is about to take the second vows, also applies to her who, although she maintains a widow's life, is nevertheless vile, wicked, impudent, or imprudent, for to her also, the education of the child and other suitable person will be denied." For it is fitting that the mother either marry or live honorably..."

[*Latin ed. p. 134*]

184. CONCERNING THE SEPARATION. The penalties imposed upon a woman who is a second wife are applicable when the woman is living an unchaste life. Also, Montanus, in *De Tutelis*, law 39, paragraph 236, states: "When a minor has a mother who is vile and depraved, and whose life, religion, morals, or property are presumed to be a danger to the minor, the judge does not consider it advisable to have the minor raised in her care, even if the father desires it." Following these points, the Defender argued that a husband is not obligated to provide support to a wife who, without the husband's fault, has, through her own recklessness, withdrawn from his company. Thus, Sanchez, in *De Matrimonio*, book 9, section 19 and following, teaches: "The husband is obligated to support his wife... Understand, however, when the wife cohabits with the husband. If, however, without the husband's fault, through her own recklessness, she withdraws from his company, she is in no way obligated to be supported, because the wife ought to be under the husband's obedience, canon 13, cause 33, question 5, and therefore, if she does not wish to render the due obedience, she is not entitled to receive the support that is due to her; for he who does not do what he ought, does not receive what is necessary." Furthermore, in *Codex de cond.*, Schmalzgrueber, in *De Sponsalibus*, number 351, also writes: "It can be added a fourth [point], namely, the right to support, which the husband must provide to her and to the family. This is excepted in the case where the wife, without the husband's fault and without a necessary cause, separates from the husband; hence, although the husband may have received the dowry from her, he is not obligated to support her, because the wife ought to be under the husband's obedience, canon 13,

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cause 33, question 5, and therefore, if she does not wish to render the due obedience, she is not entitled to receive the support that is due to her; for he who does not do what he ought, does not receive what is necessary." These points are in agreement with Ferraris, *Bibliotheca canonica*, under the word "Alimenta," and Voet, book 4, title 2. Also, the Roman Rota, in a case concerning alimony before De Retz, on January 14, 1833. Therefore, when the Defender argued that the woman had, through her own authority and without the husband's fault, deserted the marital home, and that she was also acting in an unchaste manner, he concluded that the woman's request should be rejected, and that the judgment of the diocesan court should be fully confirmed.

DEFENSE OF THE WOMAN. The woman did not offer a defense of herself; therefore, those things that the woman had previously stated against the husband's objections in the prior judgment were brought forth. She had said that from the very beginning of the marriage, the husband had shown animosity towards his wife.

[*Latin ed. p. 135*]

SEPARATION'S WOES. 135 a daughter; and then, the most grievous vexations and humiliations, which did not cease except through malicious abandonment. "The wife should endure vexation," (thus Caia claimed that she had been improperly treated by her husband); "if I had vexed her before, I will do the same, and even more, in the future; under these conditions, the wife should remain with me." But all of this, Caia continued, had its effect, since for more than sixteen years the wife remained abandoned, without Titus ever considering the well-being of his wife and daughter.

"Although he sometimes wrote letters to his wife, he did so hypocritically, so that when the wife presented herself, ready to begin living together, he would respond as if terrified, saying that it could not be done without a long and careful deliberation." "And when, in the year 1845, Titus returned to the city where his wife lived, he did not do so to take his wife with him; and the very circumstance is the most difficult journey that had to be undertaken in the winter, with the child entrusted to a nurse." Because of this circumstance, disagreements arose in the family, so that Titus was rejected by his parents. Concerning the accusations of flight, and the reason for living scandalously, the woman stated that the flight was an act committed without deliberation, but that it could not be used to prove what Titus claimed; and she maintained that the other accusations were too vague, because they did not specify anything concrete. In other letters sent to the Sacred Congregation, Caia recounted the fact that Titus had denied his wife food and the fruits of her dowry, so that even if the accusations against her were true, the primary blame should be attributed to the husband, who, after so many years of absence and denied sustenance, brought her back. With these and other considerations, the matter was to be

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resolved in Question 9: "Whether and how the opinion of the Congregation should be confirmed, or infirm."

RESOLUTION. — The Sacred Congregation of the Council, after mature discussion in a meeting held on February 18, 1865, decided to respond: the opinion should be confirmed, with the caveat. The man, not agreeing with this opinion, requested and obtained a new hearing, and with a new presentation of the case, raised the question: "Whether and how one should stand by, or recede from, the decisions in this case."

[*Latin ed. p. 136*]

136. CONCERNING SEPARATION FROM BED AND BOARD. The Congregation, on May 6, 1865, after further deliberation, responded: "It has been considered and approved." That is to say, the Congregation postponed its decision, while at the same time making its intention clear, namely, that the Episcopal Curia should once again warn the petitioner, Caius, about the controversial proposition before the Sacred Congregation, so that, if he wished, he might present his further rights. And on August 12, 1865, the cause being again proposed, the Sacred Congregation responded: "The decision stands, and furthermore."

FROM THE ABOVE, WE GATHER:

I. Grave reasons are required to decree a separation of spouses with regard to bed and board, and dwelling.

II. Among such reasons for separation, adultery of either spouse holds a prominent place.

III. For the purpose of this separation, adultery is considered proven if there are serious suspicions that adultery has been committed; although these suspicions may not be sufficient to punish the crime of adultery.

IV. Among the reasons for a temporary separation, the general desertion of the wife by the husband without just cause is included (1).

V. In the present case, both causes for divorce appear to be present: some desertion of the wife by the husband, and at least a serious suspicion of adultery on the part of the wife.

VI. These causes for divorce are related in such a way that the alleged adultery of the wife is also imputable to the husband through his desertion.

VII. Therefore, although neither spouse appeared to be deserving of a hearing in the judicial petition for separation, some right favored the wife, leading to the obtaining of this judicial separation.

VIII. This right in favor of the wife implies that the husband must provide her with sustenance, or restore her dowry, or the fruits of the dowry, as the law requires.

(1) Among the reasons for a temporary separation, the expulsion of the

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wife without just cause is included, Code of Canon Law, I, 2, chapter 7, number 9. However, such expulsion of the wife, like other causes that fall under the name of cruelty, must be considered with all its circumstances, at the discretion of a prudent judge. Furthermore, the quality of the persons involved must not be overlooked: for example, certain acts of cruelty that are considered grave with regard to noble women, might be considered less serious in women of lower status.

[*Latin ed. p. 137*]

SEPARATIONIS TORI. 187 IX. Non est permissum, quod prole educanda tradatur illi parti, cum iudicis sententia interveniat, quae educationi prolis, quae ad bonos mores et religionem tendit, detrimentum afferre possit. X. Denique, colligitur, quod tribunal coram quo vir legitime a mulier separatur, competens est iudicandi super reconventionem mulieris in eodem iudicio a viro factam; quamquam ratione domicilii mulier eodem tribunali non subjacere videatur (1).

SEPARATIONIS TORI QUOAD COMPETENTIAM. Die 28 Ianuarii 1865. Sess. 24 c. 12 de Refor. Compendium facti. Matrimonium inter Titium et Caiam, contractum in dioecesi A., non habuit exitum felix. Statim enim pax domestica turbari coepit, donec mulier, viro relicto, ad aliam diocesim B. se retulit, quam deinde vir secutus est, et in hac dioecesi coniugi manserunt per plures annos. Proles, quae interim nata est, non controversias coniugum finivit, sed eas auctas est, et Caia, auctoritatem viri contemnens, imperium (1) Cum ad petendum divortium mulier preces porrexerit tribunali cui ratione domicilii subiectus erat tantum Titius, cumque deinde Titius instantiam pariter eidem tribunali admovent adversus uxorem pro obtinenda sui favore divortii sententia, locum habuit conventio et reconventio, ita ut cum prius mulier actoris partes egerit citans Titium, postea Titius ex reconventione factus est etiam actor instantiam movens adversus mulierem. Porro inter alia contendebat mulier non potuisse Titium partes actoris agere in eo tribunali, quia actor sequi debet forum rei: forum autem Caiae illum non esse, quia Caia eidem tribunali subiecta non erat ulla ratione. Quare nullam concludebat esse sententiam latam iuxta instantiam quam Titius in eo tribunali fecerat ex defectu iurisdictionis. At eiusmodi exceptio, quae fori declinatoria dicitur, locum in praesenti casu habere non poterat: namque, caeteris omissis, quando reconventio locum habere potest, actor nequit declinare reconventionem: cuius enim in agendo observat arbitrium, eum habere et contra se iudicem in eodem negotio non dedignetur, prout statuitur in Lege 14. Cum Papinianus Codic. de sentent. et interloqut. et communiter docent auctores.

[*Latin ed. p. 138*]

138. CONCERNING THE SEPARATION OF HUSBAND AND WIFE, WITH REGARD TO JURISDICTION.

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It concerned a case where a husband and wife were estranged, and had entered into relations with others, which were said to be increasing daily; indeed, the husband often deserted the family home, unbeknownst to, or against the will of, his wife. Finally, when Titus considered resorting to legal proceedings to restrain his wife from her conduct, Caia removed herself far beyond the diocese, to the home of her parents. We omit certain details that followed, which seem less relevant to the present question. Thus, with hopes of a peaceful reconciliation lost, Titus presented a petition to the Curia in which he resided, in which, after recounting the history of the events, he requested: 1. a legitimate separation from bed and board; 2. the return of his daughter, whom Caia had taken with her. The woman, summoned by ecclesiastical authority in the diocese of B, requested and obtained four postponements in order to respond. The judge granted such postponements, because he still hoped that, abandoning the legal path, the spouses might reconcile peacefully. But all was in vain: for Caia devised another way to prolong the proceedings, raising an exception of forum non conveniens. She argued that the marriage had been entered into in the diocese of A, and that the marriage contract had been stipulated there, and not in the diocese of B, which was under a different civil jurisdiction; and therefore, this ecclesiastical tribunal was incompetent to hear a case concerning divorce involving foreigners. This exception being accepted, the ecclesiastical tribunal, considering that the defendant did not raise the exception of forum non conveniens within the legally prescribed time, according to the laws in force in that diocese. Indeed, she not only implicitly, but also explicitly, admitted the jurisdiction of the ecclesiastical tribunal by her actions, in which she requested postponements of the proceedings through four petitions. According to the sacred Canons, the Ordinary properly exercises jurisdiction in matrimonial cases even over those who have a quasi-domicile in his diocese, without it being necessary that they have a true domicile. In the present case, it was established by documents that the plaintiff, Titus, had resided firmly in that diocese for thirteen years. The distinction between domicile and subjection to civil jurisdiction was of no importance in itself; much less so in a case involving a person who had lived there for 13 years with the intention of remaining, etc.

[A decree was issued.]

[*Latin ed. p. 139*]

REGARDING THE QUESTION OF JURISDICTION. There, he declared his jurisdiction, and, rejecting the woman's exception, ordered that the proceedings be continued. Against this decree, Caia appealed to the Apostolic See. Upon the appeal being received by the Curia, the Ordinary transmitted all the documents relating to the incidental matter to the Sacred Congregation of the Council, adding letters in which he stated that, in his opinion, the decree was valid in every respect. Upon receiving the documents and let-

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ters from the Ordinary, the Sacred Congregation, as is customary, ordered the Ordinary to set a deadline for the parties to present their rights before the Sacred Congregation, and to report on the results; which was done without delay. However, when the Ordinary transmitted new submissions from the parties to the Sacred Congregation, he was greatly distressed that Caia's advocate had not only argued about the lack of jurisdiction of the forum, which he could rightly do; but had also discussed the merits of the principal controversy, and had made serious accusations against Titus, from which he should have abstained altogether. In light of these facts, the question of the doubt raised was debated. A summary of the arguments. WHAT CAIA PRESENTED IN HER FAVOR. — Caia's advocate argued that the decree was null and void on two grounds: 1. due to a lack of proper notification, since the summons initiating the proceedings had been served not personally to Caia, but to her brother; 2. due to a lack of jurisdiction in the ecclesiastical court. To prove the first defect, he argued that Caia had been completely unaware of the notification until the day immediately preceding the filing of the declinatory exception. Her brother had not informed his sister of the notification received, because he hoped, through delay or persuasion, to induce Titus to abandon the legal proceedings, or to reconcile his sister with Titus. However, whatever the reason for his behavior, Caia's brother maintained that a personal notification had not been served to Caia; and that such a defect rendered the proceedings null and void; and therefore, the decree issued was null. To prove the lack of jurisdiction of the court, the advocate stated that the marriage had been celebrated in the diocese of A.

[*Latin ed. p. 140*]

140. CONCERNING THE JURISDICTION: Titus asserted that he had obtained domicile in diocese B, and that he was not a citizen but a foreigner within that imperial jurisdiction. He sought to demonstrate this through a document obtained from the municipal records of that city within diocese B, in which his wife resided. In that document, it was stated that Titus, along with his family, was registered in the aforementioned records as a "foreign subject" and as residing there temporarily since the year 1857. Therefore, the Defender concluded that the court in question could not exercise jurisdiction.

THOSE ARGUMENTS PRESENTED IN FAVOR OF TITUS: First, Titus refuted the objection that a personal summons was required in civil actions instituted within that imperial jurisdiction; however, according to the custom of episcopal courts, it was sufficient to serve the summons either to the domestic members of the party being sued, or even at his domicile. Furthermore, he maintained that his wife had acted in such a way as to preclude any possibility of avoiding the forum through her actions. Moreover, he pointed out Canon 12 of the 24th session of the Council of Trent, which

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inflicts an anathema upon those who have said that matrimonial causes do not pertain to ecclesiastical judges. He argued that, according to canonical law, the domicile of a party is sufficient to confer jurisdiction upon an ecclesiastical tribunal, or, in the alternative, quasi-domicile. He further asserted that, without any interruption, he had resided in that city since 1843, or at least since 1850, having established a permanent residence there with his family, regardless of what may be stated in the municipal records, which do not exclude contrary evidence. In addition to these points, it is to be recalled, as Reiffenstuel teaches in book 2, title 2, number 24, that it is certainly true that, by reason of domicile, anyone acquires jurisdiction, so that he may be summoned there; indeed, it is true and natural to say that this is the forum, as is permitted in chapter 20, and in chapter 15, part 1, concerning the competence of the forum. Fagnanus, in the aforementioned chapter, number 9; and the forum of domicile is the ordinary and most universal of all forums, inasmuch as it concurs with any other forum that anyone may acquire through other titles. Reiffenstuel, loc. cit., number 28. With these arguments presented, the purpose is to resolve the matter.

[*Latin ed. p. 141*]

SEPARATION OF JURISDICTION REGARDING COMPETENCE. 141. Question. "Whether the decree of the Curia... should be confirmed, or annulled, in this case."

RESOLUTION. — The Holy Congregation, having knowledge of the matter on January 28, 1865, decided that the decree should be confirmed, responding affirmatively to the first part, and negatively to the second.

From the above, we gather:

I. Although one may be regularly said to have a forum according to the law, according to the head "Licet de Foro," concerning competence, due to the crime, contract, domicile, or thing located there; nevertheless, domicile is said to be and is the natural, ordinary, and more universal forum, and it concurs with the others.

II. It is absurd to deny the competence of any ecclesiastical tribunal in a matter pertaining to it, on the basis that the plaintiff or defendant is not considered subject to the civil jurisdiction in which said tribunal exists. For it is sufficient that the defendant, according to the canonical doctrine, is subject to some ecclesiastical court through some domicile, so that he may be summoned there (1).

III. The wife has the forum where her husband has his domicile (2).

(i) In the cause of Nullity of Marriage, "we have adduced the following in our opinion, page 129 et seq. A discussion began which was related to the present question. The spouses contracted marriage in a certain town before a parish priest who was not their proper pastor, since neither of the spouses had ever lived there. However, the husband, although from a

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foreign nation, had taken steps to be registered among the citizens of that town. When the question of the nullity of the marriage arose, the husband, who was supporting the validity of the marriage as much as he could, among other reasons, asserted that, due to said registration, he was not an outsider but was subject to the civil government of that place, and that, because of this subordination, the parish priest of that town was his proper pastor, especially since the civil laws of that place supported this. But such an argument has no value: for it was necessary that the domicile, according to canonical discipline, be present, so that the husband could be said to be subject to that parish priest before whom the marriage was contracted. Indeed, canonical jurisprudence does not consider the current civil laws as to whether one is subject or not subject, with regard to ecclesiastical effects.

(2) In Law 9 of the Code of Canon Law, the following is stated: "We elevate women by the honor of their husbands, and we ennoble them by their nature, and we establish the forum according to their persons. But if they later marry a man of a lower order, deprived of their former dignity, they follow the condition of their husbands, and we change their domiciles." Also, in Law 13 of the Code of Dignities, and Law 3 of the Code of Municipalities, and Law 9 of the Code of Jurisdictions. The canonists have followed these laws, among whom Schmalzreber, in *De Sponsalibus*, no. 349, wrote: "The proper effect, on the part of the wife, is that she acquires a..."

[*Latin ed. p. 142*]

142. OBSTACLES TO MARRIAGE. January 28, 1865. Session 24, chapter 1, concerning reforms in marriage. Summary of the case. A young woman named Caia, daughter of a shoemaker, resided in the lower part of a house with her parents. In the upper part of the same house lived a young man named Titus, along with his uncles. The proximity of their dwellings initially fostered friendship between them; this friendship subsequently aroused affections, which progressed to the point that, through illicit intercourse, Caia became pregnant. Later, when Titus contemplated entering into marriage with another woman, Caia, accompanied by her mother, approached the episcopal curia and requested that Titus be prevented from entering into any further marriages, due to the promise of marriage he had given her, and because of the child she had conceived through their unlawful union. The curia granted these requests, issuing a decree stating: "Nothing shall pass." Subsequently, when Titus requested a certificate of freedom from marriage in order to enter into marriage with another woman, the curia was obligated to deny this request, until a legal process was instituted and a judgment was rendered that would invalidate the obstacle to his marriage. However, since the Bishop had abstained from rendering such a judgment due to particular circumstances, petitions were made to the Apostolic See to overturn the decree and declare Titus

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free. In these petitions, Titus presented arguments favorable to his case, stating, among other things, that he had frequented Caia's dwelling at her instigation, etc., but that he had not, either in writing or verbally, promised her marriage; that he was, however, prepared to take her as his wife, provided that his uncles, with whom he shares a household and property, would agree to it, so that the dowry could be claimed not where the marriage agreement was concluded, but where the husband resides. This law had such force in canonical discipline that, if the husband were a cleric, who, of course, would observe the Tridentine canons, matters pertaining to the nature of the marriage would be judged in the ecclesiastical forum of the husband, even if those matters would not naturally belong to that forum. This is stated by De Ameno in his *Tractatus de Delictis et Pœnis*, title 1, § 2, n. 5. Furthermore, citing numerous resolutions, Ferraris in his *Bibliotheca Canonica*, under the word "Uxor" (wife), 56 and following, states that the wives of clerics enjoy the privileges of the forum and other exemptions that belong to their husbands, during their lifetime. The same author also states that it has been decided that this applies to the wives of Greek clerics. For the wife follows the husband's dignity and forum.

[*Latin ed. p. 143*]

OBSTACLES TO MARRIAGE. She received sustenance from them, and they had agreed to this marriage, and to obligate themselves henceforth to the support of the spouse; for he had no means of livelihood. To all of this, her relatives vehemently objected. Finally, she stated that she had forfeited any right to this marriage, because she had behaved licentiously, pursuing another young man, and had even fled with him. It must not be overlooked that Titus, in the subsequent legal proceedings, asserted that he had promised marriage to Caia, but under the condition that her relatives, with whom she lived, would consent. After Titus's pleas were heard, as is customary, the Bishop was requested to, after hearing the woman and her parents, ascertain the facts and, after completing and transmitting the proceedings, along with the testimony, to report on the existence of the marriage and on the subsequent course of the woman's life. The Bishop, having this duty assigned to him, diligently conducted the proceedings. Caia declared in the court: that Titus's petition was filled with falsehoods; that it was entirely false that Titus had courted her, when in fact he himself, of his own accord, or through some window or door, the keys of which he held, entered her dwelling; that it was entirely false that Titus had promised her marriage, when he had repeatedly assured her that he would marry her even without a dowry, if her relatives were unwilling; and that there were two witnesses to this promise; that it was equally false that she had behaved licentiously, either before or after the offense committed by Titus, and that two testimonies from parish priests, which she presented, would attest to the honesty of her life, as well as other witnesses, whom she indicated;

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that what was said about the elopement was false; but that the truth of the matter was this: that, out of fear of violence from her father, who suspected that she was involved in a love affair with another young man, she had gone to the house of a certain woman, where the family sometimes stayed for the purpose of visiting, and where she had remained for three hours, returning home with the woman. The witnesses whom Titus and Caia called were subjected to judicial examination, and from their testimonies, given under oath, the following facts are established. The testimonies were consistent regarding the woman's affections for Titus, and regarding the father's outrage, except for that, Caia was always considered to be of good character; indeed, there were three or four witnesses who, except for that incident, testified to Caia's good morals.

[*Latin ed. p. 144*]

144. OBSTACLES TO MARRIAGE. They strongly recommended, for the sake of a domestic and religious way of life, which did not allow a woman to leave the house except when accompanied by her parents; and this was supported by the testimonies of two parish priests. As for the accusations of elopement and other affections, for which the girl was accused by Titus, witnesses summoned by the same Titus testified as follows. The very woman in whose house the girl had taken refuge out of fear of violence, Caia, gave written statements in which she testified that one Sunday morning she had found Caia fleeing to her house, terrified and weeping; she had questioned Caia as to why she had done so, and Caia had replied: "I had been severely beaten by my father, because I had been found one night at the window, talking to a young man named Sempronius." "She begged me (the same witness continues) to help her to bring Sempronius, because, out of fear of further beatings, she wanted to leave with him and go to Sempronius's homeland." However, this was not done by the witness herself. Other witnesses confirmed this in their written statements, and when questioned by the judge as to whether they had received any payment from Titus in order to testify, they replied that they had indeed received something from Titus for their written testimonies. But although they may have received a payment for this reason, and one or more may have been tempted to testify, they do not appear to have been suborned to give false testimony. The Bishop, in his open judgment, held the opinion that it was not necessary to overturn the decree.

SYNOPTIC DISCUSSION. DEFENSE OF TITUS. The defender of Titus argued, among other things, that when the question is raised of whether a person is bound, we should be more inclined to deny, as it is written in the Law 47 ff. concerning obligations and actions, and that what is least likely to be the case must be held, according to the law 99 ff. concerning binding words, especially when it comes to the obligation of marriage, which concerns a man's freedom in a matter of great importance; therefore, unless

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proof is presented that removes all doubt, even the slightest, one must stand for freedom, as taught by the Sacred Roman Rota in Pampilonen, on June 28, 1754, before Bonell, § 3, and elsewhere, as well as by the Sacred Congregation of Councils in Romana, or the Common Compendium of Marriages, on November 24, 1781, and in Sypontina Marriages, on June 22, 1861, and in many other places. It is not enough to demonstrate merely that someone was present.

[*Latin ed. p. 145*]

IMPEDIMENTS TO MARRIAGE. i 1 ! t } 145 Ordination, disposition, and will to enter into marriage are necessary, but mutual and perfect consent must be demonstrated. This mutual consent must include two elements: firstly, an explicit and seriously considered promise to enter into the marriage; secondly, a similar promise from the other party. If either of these is lacking, the obligation of the betrothal is not understood. Furthermore, in the present case, the Defender readily conceded that a conditional promise of marriage had been made by the man: but the condition did not take effect, because of the dissent of the parents, who affirmed that they were opposed to such a marriage. However, "where the condition is not fulfilled, the obligation vanishes," Leg. 4 ff. de pact. Therefore, even if a promise had been made by the woman, it would have no value due to the unfulfilled condition; and much less could the act of carnal intercourse have taken the place of a promise, as it could only lead to the presumption of the acceptance of the conditional promise, as observed by Cosci, ad Vota de spons. decis. 25 n. 7. But, leaving aside these points, the Defender argued that, even if the betrothal were valid, either party has the right to withdraw from the agreement for a just cause; indeed, apart from the fear of losing the inheritance, by which Titus was urged, the woman, Caia, violated the faith in this case, as she devoted herself to other loves. And the witnesses who affirmed this could not be called suborned to give false testimony; for one witness received money after the testimony was given as a gift, and furthermore, it is not to be presumed that anyone would easily break their oath under the influence of a small sum of money.

DEFENSE OF CAIA. — On the contrary, in the defense undertaken on behalf of Caia, it was noted that, in the present case, there was sufficient evidence of a promise of marriage from the man. For Titus testified in court that he had made a promise; although he said that it was conditional. However, as far as the condition is concerned, less credence should be given to his words. For the condition that he claimed to have imposed must be conclusively proven by him, according to the well-known rule: "the one who raises an exception is the accuser," L. 2 (f. de probat, and L. 23 C. under the same title. Especially in the present case, in which Titus contradicted himself. For he stated in his prayers, neither orally nor in writing, that he

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had promised anything.

[*Latin ed. p. 146*]

146. OBSTACLES TO THE SACRAMENT OF MATRIMONY. He stated twice; but in court, he admitted having made a promise, albeit under a condition. However, there were not lacking testimonies in favor of this absolute promise. The mother of Caia testified that Titus had promised, on several occasions, to take Caia as his wife, even if he possessed not a single coin, should her parents refuse. Another witness testified: "I testify that Caia, while engaged in courtship with Titus (therefore, not suspect), told me several times that Titus wanted to marry her." Therefore, it was concluded that either the asserted condition did not exist, or it was contradicted by the evidence. If, indeed, the marriage had been conditional, the condition would have been understood to have been removed by the parties themselves, due to the defloration and the subsequent birth of a child. The defloration of an honest girl not only provides an indication of a marriage and constitutes a formal promise on the part of the woman, but also converts a conditional promise into an absolute one, as argued from the texts, Cap. De illis, and Cap. Per tuas, concerning conditions, Heiffenst. in I. 4 decr. tit. ^i §. 4 n. 08. Just as an honest woman is not presumed to have fallen into such dishonor unless it is due to faith and in view of a future marriage, so likewise, she is not presumed to have yielded to the desires of a lover unless the condition is either expressly or tacitly removed, which would render the future marriage too uncertain and precarious. Indeed, Caia's honesty could not be doubted, both from the testimonies of the parish priests and from the depositions of the witnesses, who testified unanimously to her honesty; and, moreover, they reported that she had lived and continues to live with stricter morals and greater circumspection. Regarding the accusation against Caia of having fled with another man, it was observed that such an accusation was suspect, as it appears both from the diligence with which the opposing party sought testimonies to demonstrate the girl's corrupt morals, and because one of the witnesses signed a document prepared by the opposing party, and because another was said to bear hatred towards Caia's parents. Indeed, the conduct of the witnesses must be carefully examined, and their testimony is only admissible if it is free from suspicion, as stated in law 3 ff. concerning Witnesses: "If the testimony is free from suspicion, either because of the person from whom it is brought, who is honest, or because of other reasons..."

[*Latin ed. p. 147*]

OBSTACLES TO MARRIAGE. 147. It is admitted that, whether for the sake of gain, or of grace, or of enmity, a marriage may be impeded. "These and other considerations are to be taken into account in determining whether the intention of marriage is present, and if so, how."

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RESOLUTION: – The Holy Congregation of the Council, after discussion in the meetings held on January 28, 1865, judged it fitting to respond affirmatively. From this, the following are deduced: I. The obligation of marriage, which arises from a serious and deliberate will, by which one party promises, and the other repromises, marriage, is to be considered conclusively proven, without any doubt. II. If defloration has occurred, if there is no explicit repromise on the part of the woman, it is presumed to be from a shameful act, unless the girl demonstrates that she is entirely virtuous. III. This presumption (which arises from the fact that a virtuous girl is never induced to commit such a disgrace unless she is certain of the future marriage) ceases, if there are indications that the girl and her parents do not seem to value the daughter's own virtue very much (1). IV. In the present case, all other things being omitted, if marriage had taken place, the man would have become free by the very fact that the woman began to engage in other affections with another. (i) The following should be read, which was written by Christopher Cosci in the celebrated Volume VII, on such marriages of the children of families.

[*Latin ed. p. 148*]

148 SERVICES OF THE CHOIR. On February 1st, 1865. Summary of proceedings. The Bishop N., in a report to the Sacred Congregation of Rites concerning the state of his church, stated that the canons of the cathedral, according to a decree from the Holy See, recited the canonical hours during the Advent season after Compline, the Matins of the following day. He requested that this decree be extended to the Lenten season, and especially to Sundays and the third and sixth days of the week, while maintaining the obligation of reciting the complete choral office at three times: namely, after Compline, Matins and Lauds for the following day; after sunrise, Prime, Third Hour with the customary Mass of the Saint, and Sext; at the tenth hour before noon, None with the second Mass of the day, after which the canons would attend the sacred concourse, and then Vespers. When the Bishop was informed that the decree from the Holy See had been approved, he reported that he had been unable to find this decree in the chapter archives; however, he sent a copy of the constitutions of the chapter approved by the preceding Bishop, which stated as follows: "The choral office is to be performed completely three times daily, except during the Octave of Corpus Christi, except on Sundays and feast days that occur during Advent, and throughout the entire Triduum of Easter; then, after Compline of the preceding day, Matins with Lauds for the following day are recited." The Bishop recommended the anticipated recitation of Matins during the Lenten season as being beneficial to the people, to whom it was given to attend private Masses, and where a greater number of confessors were available. MATTERS WHICH WERE OBSERVED BY OBLIGATION. – Namely, it was noted that the recitation of the divine office in the choir

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must take place at certain hours established by ecclesiastical laws, as stated in Chapter 1 of the Clementine Decretal on the celebration of Mass; and although the recitation of Matins with Lauds is mentioned as taking place at midnight in Chapter 1 of the Decretals on the celebration of Mass, this ancient discipline was subsequently relaxed, and the recitation of Matins was transferred to dawn, so that...

[*Latin ed. p. 149*]

SERVICES OF THE CHOIR. In cathedral churches, except for the three last days of the greater week, Matins must be recited in the morning, and not in the evening for the following day, as taught by Benedict XIV, *Inst. eccl.* 24, n. 9, and *De Syn. dioec.* I, 13, c. 9, n. 13. However, it has been observed that, in certain reasonable cases, the Holy See has sometimes made exceptions to this general rule; for from p. 379 of *L. 17 Decret*, it is known that the Holy Congregation of the Council, on November 12, 1644, considered a request to be granted, at the discretion of the Bishop, the faculty of reciting Matins after the completion of the previous day's Vespers. In Abulen, on January 23, 1790, the matter of the cathedral church was discussed, which, perhaps from its foundation until the year 1772, had maintained the old discipline of reciting Matins at midnight. However, inclement weather, the more fitting recitation of Matins, a good example for the people, and other concurrent serious circumstances seemed to suggest that Matins with Lauds should be recited after the completion of Vespers the previous day; and to the question: "Whether and how it is permissible to recite the Divine Office in the choir in this case," the Holy See responded affirmatively, according to the judgment of the Bishop, by a Brief. In Montis Politia, on June 26, 1723, the Holy See granted an indulgence to the canons of the cathedral church, which was located on the summit of a mountain, so that, for the sake of their health during the winter, from the day immediately following the feast of the Epiphany until the day of Ash Wednesday, they might recite Matins and Lauds of the following day in the evening, although the capitular constitutions had been confirmed by Apostolic authority. Even more readily did the Holy See grant a dispensation when it was a matter of promoting the spiritual good of the faithful, as in Casale, on September 21, 1822, where a request was made for the anticipation of Matins, due to the theological and penitential office, and to the duty of hearing the confessions of the faithful by several canons, and to prevent the harm that would be caused to the faithful if the canons were distracted from administering this sacrament in the morning of a feast day, and to the question: "Whether and how an Indulgence may be granted in this case," the response was: affirmatively, at the discretion and conscience of the Bishop, for a period of ten years, by word. Nor was the response different

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in Massena, on December 10 of the same year, 1822.

[*Latin ed. p. 150*]

150 SERVICES OF THE CHOIR. Although there are cases in which this concession has been denied by the Holy Congregation, as in Fermo, on July 10, 1790, where the recitation of Matins was postponed after Compline, rather for the convenience of the Canons, than for the benefit of the faithful. Indeed, a recent example was brought up in Balneoregien, on June 25, 1864, through summary reports, in which the response was: "For the granting of this, according to the vote of the Bishop, for a period of ten years, with the consent of the Most Holy." Having observed these matters, the following indulgence was granted. RESOLUTION. – The Holy Congregation, having considered the matter on February 16, 1865, decided to respond: "For the granting of this, for the days designated by the Bishop, for a period of ten years, with the consent of the Most Holy; and according to (1)." From the COLLECTIONS: I. In cathedrals and collegiate churches, the Divine Office must be performed at the appointed hours. II. The appointed hours for the choral recitation of Matins with Lauds are not the evening hours of the preceding day; this is indicated by the name "Matins" itself, and the mention of dawn in the Lauds further confirms this. III. Therefore, although the old custom is no longer always observed in secular churches to publicly perform the praises of the Creator at dawn on the same day in the Lauds; nevertheless, it is contrary to the established order of the Church for the choral recitation of Matins to take place at the time when the evening prayers are assigned by the Church. IV. However, if there are reasonable causes, and if these are permanent, the Holy See may perpetually grant this anticipation; if they are temporary, the Bishop should prudently postpone it for a time (2). (1) The intention of the Holy Congregation was that, except on the days of Lent, Vespers should not be recited in the morning. (2) It is not necessary here to mention a certain controversy between the Bishop and the Chapter of the cathedral of Pavia, which was resolved by Pope Benedict XIII, on July 8, 1726; this controversy and its resolution are described by Ferraris in Bibliotheca Canonica, under the word "Officium divinum," art. 4, n. 37: "The aforementioned Chapter, without requesting the necessary permission from the Bishop, claimed to use the indulgence granted by the Holy Congregation; although, after being left to the discretion of the Bishop, now Archbishop, to recite Matins after Compline at certain times of the year, and..."

[*Latin ed. p. 151*]

MOST HOLY FATHER, GREETINGS. FROM THE VISITATIO SACRA, March 16, 1866. Summary of the Case. The Bishop of the diocese A, in Italy, in his letters to the Sacred Congregation of Bishops and Regulars, stated that certain Religious Orders were established in his diocese, namely the

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Somascans, Capuchins, Franciscan Minors, and the Observants, and finally, the Servants of the Most Holy Virgin, commonly called the Servites, whose monasteries had been restored after the noted vicissitudes of the French suppression, and who were accustomed to perform divine functions in their churches with the assistance of secular priests, who therefore celebrated the Sacrifice of the Mass there, and also administered the sacred sacrament of penance; furthermore, in those same churches, Christian doctrine was taught to children, the Catechism was explained to the people, and extraordinary functions were performed without his permission, to the detriment of parochial rights. Specifically, concerning the church attached to the convent of the Servants of the Most Holy Virgin, where a famous sanctuary of the B.V.M. was located, he considered that the Servites owed him dependence and subjection in virtue of a certain special agreement, which had been solemnly entered into during the restoration of the monastery between the Bishop at that time and the local Superiors of that house. The controversy was settled, and decided on the date and year mentioned above by Benedict XIII, through his special Brief, reported by the most esteemed Cardinal de Lambertius, afterwards the blessed memory of the Supreme Pontiff, in Volume 5, Notification 19, § 4, with these words: "Therefore, since those Dignitaries and Canons were first suspended from their monthly benefits, and then from divine offices, because they dared to recite the Matins office in defiance of you, and in violation of the regulations, after the evening prayers of the preceding day, having interposed an appeal, and the Rescript of our Venerable Brothers, the Cardinals of the Holy Roman Church, interpreters of the Council of Trent, we praise the zeal and devotion of your fraternity, etc.; therefore, since the Canons have seized an opportunity to oppose the recitation of the Matins office, we declare by these present letters that your authority has hitherto been, and we decree that it shall always be, the power to grant to those same Canons, or to permit them, whenever and for as long as it seems opportune to you, to alter the times of recitation of the statutes."

[*Latin ed. p. 152*]

152 OF SACRED VISITATION. Asked by the Holy See, the Bishop, considering those matters which he judged most pertinent to enable him to undertake a sacred visitation there, responded that these matters were situated in the fact that his predecessor had indeed exercised these rights; that secular priests were accustomed to celebrate the Sacrifice of the Mass and to hear confessions there; that Christian doctrine and the catechism were explained there; that, finally, divine functions were celebrated outside the established order without his consent, to the detriment of the parish priests. The Holy See ordered that the highest superiors of the Regular clergy, whom we have named, should be heard, and specifically that they should be questioned as to the number of religious residing in their respec-

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tive houses. Furthermore, they were invited to present any reasons that might be favorable to their cause. Indeed, concerning the number of religious, the aforementioned superiors stated that, in all their houses, there were more than twelve religious; they denied that which the Bishop asserted, namely that his predecessor had visited the regular churches, except perhaps for a time when religious resided in religious houses in a number less than twelve. One of the superiors of the Somaschi Fathers declared that he maintained an orphanage in that diocese, with one priest and four laypersons dedicated to the service of the orphans. As for the particular reasons presented by the Bishop in his petition, the aforementioned superiors responded unanimously that secular priests were not admitted into their churches, neither to offer the Sacrifice of the Temple, nor to hear confessions, unless they presented the necessary authorization and approval of the Bishop, either for the Sacrifice or for the confessions, as is commonly done in all churches, both regular and secular. They considered it pleasing and agreeable, not burdensome and onerous, if the religious were to assist the parish priests in teaching Christian doctrine and the catechism to children and to simple-minded individuals. Finally, concerning extraordinary functions, they stated that they had never denied, nor did they now deny, due obedience to the Bishop. As mentioned above, the Bishop had brought forth his complaints against the Servants of the Most Holy Virgin concerning the cult and celebration of devotion at the sanctuary located within their church. Concerning this—

[*Latin ed. p. 153*]

SACRED VISITATIONS. 153. It is stated that the aforementioned community was restored to the Servites in the year 1853, and on that occasion, an agreement was reached between the community. In this agreement, with the consent of the civil government (for the ecclesiastical bonds imposed by that government still remained in force), the Bishop and the Superiors of the Servites, by mutual agreement, established certain laws and regulations that were to be observed both in the celebration of Masses which the faithful attended, and in functions performed outside of the order, and in offerings made, and in the performance of divine offices, and in the administration of goods. Regarding these matters individually, it is sufficient to say that in each case it was determined which rights belonged to the Bishop, and which to the Religious; and therefore, it seemed that no further difficulties remained.

SYNOPTIC SUMMARY. After all matters pertaining to the case had been briefly set forth in the Consultation, as is customary, it was noted that the Bishop's petition was a general one, and although the question concerned only the Regular clergy residing in the diocese of N., nevertheless it extended to all regular churches of whatever places, especially concerning the explanation of Christian doctrine and catechism,

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as well as the celebration of Mass, and the sacrament of Penance, with regard to secular priests. First, therefore, the controversy was presented in a general manner, and then in a special manner.

WHAT SHOULD BE ADDRESSED REGARDING THE GENERAL QUESTION. The Supreme Pontiffs (as it was stated there) have never ceased to grant the Regular Orders the most extensive privileges of exemption from the authority of the Bishops, in order to reward them for their merits towards the Church; and the same Pontiffs have granted these privileges all the more, as the Superiors of the Regular Orders, having become more affluent, were able to more easily and effectively maintain regular observance in their religious houses. However, as with all things in human affairs, with the passage of time, and due to the diversity of circumstances, nothing can fail to deteriorate and decline; and therefore, it is not surprising that even the Regular Orders should suffer some decline, and that the privileges granted to them should bring with them some abuse. And indeed, small communities, commonly called "convents," have, in some places, suffered this inconvenience due to the small number of Religious.

[*Latin ed. p. 154*]

154 OF SACRED VISITATION. It was discovered that regular observance was being neglected, and that they were not fulfilling the principal purpose for which they had been founded. Therefore, the Most Reverend Innocent X decided to devise a suitable and opportune remedy for this situation. To achieve this, a distinction was made between convents where there were twelve religious men, and convents where there were fewer than that number. As for the former, nothing was changed, and therefore the privileges pertaining to them remained intact, with all their rights and protections preserved. Thus, when the question was raised by the Bishop-Orator, it seemed that no jurisdictional act could be exercised by the Bishop over the Capuchins, the Minor Franciscans and the Observants, nor over the Servites, nor over their sacred buildings (except that these conditions, as established in the agreements concluded in Patti in the year 1835, must be strictly observed); since, as noted above, their religious houses located in that diocese exceeded the number of twelve members. Then the discussion turned to convents in which there were fewer than twelve members. Indeed, these houses were suppressed and extinguished by the Apostolic letters of Innocent X, but at the same time, a large part of these suppressed houses was restored, with the condition that all of them, more or less, would be subject to the jurisdiction of the Bishops and to their sacred visitation. This was accomplished by the Decree beginning "Ut in parvis," dated February 10, 1654, as can be seen in Fagnanus's work, *Relatio de Cap. Relatum 7 Ne Cleric. vel Monach*. A certain cleric, who, as secretary of that Congregation appointed by Innocent X, played

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a significant role in this matter, diligently recounts the history. Briefly, the renowned author of the most recent work published this year by our printing house, entitled *De VV. SS. LL. seu instructio Ben. XIII. exposita et illustrata*, Volume H, pages 29 and following, touches upon this subject. There, all the declarations made on this matter are also presented, and they are worthy of being known to the Bishops, so that, as far as their power over such small convents is concerned, they may safely and certainly know (1). (1) This work, which is completed in three volumes, will provide readers with abundant instruction. The renowned author, Angelus Lucidi, who holds the office of writing.

[*Latin ed. p. 155*]

SACRED VISITATION. 155 Indeed, the Bishop, concerning whom the matter arose, in the orphanage of the Somaschi Fathers, solely on the basis of the aforementioned considerations, might have been able to conduct a visitation because of the deficiency in the number of brethren. However, due to a special privilege granted to the Somaschi congregation by the Supreme Pontiffs, he would not have been able to exercise this right there: for it was alleged that Apostolic Constitutions, by virtue of which the orphanage and other sacred institutions entrusted to that congregation were exempt from all episcopal jurisdiction and from sacred visitation. Furthermore, it was noted that the Sacred Congregation of Rites, in its responses to the reports of the Bishops, concerning the visitation of smaller religious houses (of which Instruction Benedict XIII speaks, IV, n. 3), does not solemnly urge that this right, which is ordinarily omitted by all, should be exercised, unless particular circumstances otherwise suggest. Nor is the discipline of the Sacred Congregation of Extraordinary Affairs and Regular Canons different: this is certainly confirmed by the example of a certain Oratory in Treviso, which was brought before that Sacred Congregation on several occasions. In that case, the Oratory was attached to a hospice of the Society of Jesus. The Bishop of Treviso had wished to undertake its visitation; but the Sacred Congregation, after several deliberations, and without any doubt whatsoever that all things pertaining to the divine cult were observed there piously and religiously; finally, on March 20, 1857, postponed the matter indefinitely, giving the response: "Deferred, and write to the Bishop, that, considering the particular circumstances, he abstain from the visitation of the Oratory."

WHAT WAS PRESENTED IN THE SPECIAL CONTROVERSY. The discussion began with the celebration of Mass, concerning which it had already been decreed by the Apostolic See that, in the churches of religious orders, external priests should not be admitted to celebrate the Sacred Rite, unless first they have presented a letter from their own Bishop, which are commonly called "letters of dispensation," because they are secretly delivered to the Bishop from their own Bishop, for the purpose of preparing

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reports for the Sacred Congregation of Rites and Consultations in the Sacred Congregation of Extraordinary Affairs and Regular Canons. In this work, the Sacred Congregation established this rule for itself, that nothing of its own should be introduced, but that everything should be based on the demands of canonical law, pontifical Constitutions, and declarations of the Holy and Supreme Congregations of Rome. The work is divided into two parts; the first, and the second volumes, explain the rights that refer to the individual chapters of the Instruction of Benedict XIII; the second part, contained in the third volume, contains numerous documents, such as certain Constitutions of the Pontiffs, sheets of the Sacred Congregation of Rites, and other similar documents, which would have caused boredom in the reader of the work.

[*Latin ed. p. 156*]

156. OF SACRED VISITS. [A dispensation] is granted, whereby someone departing from the diocese, namely for the purpose that, whatever he may do here, he may be permitted to celebrate Mass without difficulty. For it is clear that the Bishop can demand this in regular churches, as is evident from the declaration of the Sacred Congregation of [the date] November 7, 1594, in book 6, decrees, page 78, according to Benedict XIV, Institutes of Church Law, 34, number 4. But what is the law, if we are speaking of priests who are not from outside [the diocese]? It is indeed declared everywhere by established practice that these should not be admitted without a special permission, which dictates that Bishops grant such special permissions, either indefinitely or for a time, to individual priests, so that they may be able to celebrate Mass wherever they may be. And indeed, in dioceses with a small number of priests, such a letter is often granted once, before the first Mass after ordination; but in populous dioceses, it is granted for a time; thus, in the esteemed City [Rome], it is granted only for a year to even Roman priests. Now, since it is the case that if, in regular churches existing in the diocese, priests, whether from outside or native, endowed with such permissions, presented themselves, so that they might be allowed to celebrate Mass, it did not seem that such an impediment or prohibition could be imposed upon them by the same Bishop; nay, indeed, there seemed to be no reason why it could be said that he had the right to inspect the regular church with a sacred visit for that reason. The same must be determined concerning priests who, having been duly approved by the Bishop to hear confessions, are received in regular churches to administer the sacrament of penance, provided that the approval is unlimited and absolute, that is, not restricted to certain places, or to certain persons, or by any other limit. Concerning the explanation of doctrine and the catechism, a declaration of the Sacred Congregation was issued in Ferrara, on the doctrine of Christianity, on August 11, 1742. Certain most pious canons had honored certain missionary priests, with the condition that, on feast days, they should impart

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Christian doctrine and the catechism to the people in a certain rural church. The diocesan Bishop, by his decree, ordered that this duty be performed on weekdays. When the missionary priests returned, a doubt arose: "Whether it is permissible for the missionary priests to impart Christian doctrine to the people" on Sundays in the rural church of Fantolina, according to the form of the pious [foundation].

[*Latin ed. p. 157*]

SACRED VISITATIONS. 157. Concerning the disposition of Canon Bertoni: or rather, whether the decree of the Eminent Prelate should be followed in this case, the Sacred Congregation responded: Affirmative, regarding the first part; and concerning the manner, at the discretion of the Archbishop. From this, it could be inferred that Bishops indeed have the power to determine the manner and form in which religious residing in their diocese should fulfill the duty of teaching Christian doctrine and catechism; but certainly not to prohibit them from performing this duty altogether, and much less to have grounds for undertaking a canonical visitation in the churches of those religious. Having considered these matters, the following question was proposed under a general formula: "How should one respond to the letters of Bishop N., and especially concerning the sanctuary of the Blessed Virgin Mary in the place N. N.?"

RESPONSE. – The Sacred Congregation, having summoned the Bishop and the Religious for examination in a plenary meeting on March 16, 1866, judged that the following should be answered: As it is explained, it does not legally obligate the Bishop to undertake a canonical visitation.

CONCLUSIONS:

I. Congregations of religious, in which the number of religious is twelve or more, are exempt from the jurisdiction and canonical visitation of the Bishop.

II. Congregations, in which the same number is not maintained, are subject to the jurisdiction and episcopal visitation, according to the terms of Apostolic decrees and declarations of the Holy See.

III. Bishops can require that, in the churches of religious, external priests not be admitted to celebrate the sacrifice of the Mass, unless they have previously obtained a letter of dispensation from the same Bishop.

IV. In general, Bishops cannot prohibit religious from publicly teaching Christian doctrine and catechism (1).

V. However, they can determine the manner in which both of these things can be carried out. (1) See Appendix VI, in which a question, somewhat contrary to this, regarding what pertains to catechism, was

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discussed in the Sacred Congregation in the year 1861.

[*Latin ed. p. 158*]

158 CONCERNING THE FOURTH PART OF FUNERAL EXPENSES. January 19, 1866. Summary of the case. Pope Benedict XIII, in the year 1725, issued a Constitution concerning Italy and the adjacent islands, which begins: "The Roman Pontiff, in order to settle disputes between parish priests and the monasteries or convents of religious orders regarding the payment of the fourth part of funeral expenses, which is due to the parish priest according to the Holy Canons, decrees as follows: 'We decree and command that in Italy, and in the islands adjacent to it, for the deceased buried in the churches of any of the aforementioned religious orders, the fourth part of all offerings and candles, with which the deceased's body is accompanied on the journey to the burial church, as well as all offerings and candles that are lit in the same church around the body, or even on the altars on the day of the funeral, be paid and delivered effectively. However, the candles which the priests, even religious, carry manually along the way during the funeral procession are excepted from this fourth part. If the funeral does not take place on the day of burial, but is postponed to a different day, or to a longer period, nevertheless the fourth part must still be assigned to the parish priest. Furthermore, all of these things shall apply, and shall be observed exactly in the future, whenever a deceased person is buried or exposed outside of his own parish church, whether because he has obtained a benefit in the burial or exposition church, or because he has a family tomb there, or finally because he has chosen that church for burial... Where, however, legitimately approved customs, agreements, concordats, or statutes are in force, which are more favorable to the aforementioned parish priests, and which assign them a larger portion of the aforementioned funeral emoluments, those shall be observed without fail in those places where they are in force, etc.'" A question arises concerning this last part of the decree, which has arisen between the Chapter of the Collegiate Church of N., to which the care of souls is attached, and a certain church of a religious order. The Archpriest of the Collegiate Church contends that, by a custom already in force at the time of the aforementioned Constitution, the Chapter is entitled not to the fourth part, but to half of the funeral emoluments.

[*Latin ed. p. 159*]

CONCERNING THE FOURTH PART [OF FUNERAL FEES]. It has been the custom until now that, although the collegiate church was being restored for several years, and through a temporary agreement, (which did not break the custom) all funeral services for the deceased were celebrated in the church of the Regulars; however, with things returned to their former state, the old law must be revived. On the contrary, the Regulars claimed

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that this special custom existed until the year 1731, but they lacked evidence to demonstrate that this custom had continued until the present day. Indeed, the Regulars presented some testimonies from elderly men, who testified that they remembered, before the aforementioned agreement, that the Chapter was accustomed to pay the Monastery not half, but a fourth part of the funeral fees. Therefore, the Regulars argued that the ancient, unwritten custom, which was in force with the favor of the Chapter, had been superseded in 1731 by a contrary custom, so that the Chapter should only pay the true fourth part of the fees, and not half. Given these facts and documents presented, the following question was to be resolved: "Whether it is a legitimate custom, favored by the Chapter of the parish collegiate church of N., to receive half of the fees on the occasion of the burial of parishioners in the church of the Regulars of N. in this case."

RESOLUTION. — The Congregation of Bishops and Regulars, having considered the matter on January 19, 1866, decided to respond affirmatively, and furthermore:

FROM THE PREMISES, WE DECIDE:

I. In matters of funerals, local custom has considerable weight.

II. A pre-existing, unwritten custom is not considered to have been abrogated by a contrary custom, unless it is conclusively demonstrated that this contrary custom was in force, by the one who affirms that it was introduced.

III. In the present case, no such facts have been presented that would demonstrate that a custom was introduced with the effect of at least weakening the pre-existing, unwritten custom, which had gained considerable legal force from the Benedictine Constitution.

[*Latin ed. p. 160*]

160 FROM S, THE CONGREGATION CONCERNING THE STATE OF RELIGIOUS ORDERS. CONCERNING THE DECLARATION OF ECCLESIASTICAL LETTERS. On August 16, 1866, a Father of the Order from the Northern region of America presented the following questions to the Sacred Congregation concerning the State of Religious Orders:

I. "It is doubted whether, in the case where a secular priest has requested and obtained the habit, and has surpassed the age of 25 by a considerable amount, the solemn profession can be postponed beyond the customary three years, provided that, of course, he does not present sufficient arguments of his vocation within that three-year period."

II. "And if, after one or two years, he still appears doubtful or suspect (e.g., if he suffers from the vice of drunkenness), whether he should then be immediately dismissed, or whether he can be retained in the Order with simple vows, so that the fear of expulsion may make him more cautious;

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and so that he may not completely fall away into the world and perish; and because, if he behaves well, he can be very useful to the monastery, for example, through his education."

Before such questions were presented to the Sacred Congregation for resolution, the General Procurator of the same Religious Order was heard in Rome, who, concerning the first question, pointed out, according to the words of the Litterae Encyclicarum of March 18, 1857, namely: "The Superior General, and also the Provincial, can, for just and reasonable causes, postpone the profession of solemn vows, but not beyond the age of 25; therefore, the answer to the first question should be negative; nevertheless, it seemed useful if such a faculty were granted to Superiors of Religious Orders in the region of America, in which there is no case where respectable men, lacking in probity, science, and learning, are afflicted by drunkenness. For, among the indigenous peoples, who make up the majority of the federated states of the North, there is a tendency towards this vice, which, although it is to be reproved in all, should be especially reproved in an ecclesiastical man, although such a vice..."

[*Latin ed. p. 161*]

CONCERNING THE DECLARATION REGARDING APOSTOLIC LETTERS. 161 – A grave scandal would not be created in those regions, as it would create in our own. Therefore, the esteemed Procurator considered it opportune to solemnly suspend the Profession whenever a student appeared to be afflicted with "such a vice."

A SYNOPTIC DISCUSSION.

THOSE POINTS WHICH INDICATED A NEGATIVE RESPONSE WERE NOTED. – In the Consultation, which is customarily drawn up, the following words were added to the cited Encyclical Letters, which begin: "No one is unaware that on March 19, 1857, the following was stated: 'Those who have made simple vows, after three years from the day on which they made them, if they are found worthy, shall be admitted to the solemn profession of vows, unless, perhaps, for some places, as has been granted to certain Institutes, the profession of simple vows has already been granted for a longer period of time. The General Superior, and also the Provincial Superior, for just and reasonable reasons, may postpone the solemn profession of vows, but not beyond the age of 25 years. If, however, there are no Provincial Superiors in the Order or Institute, the same power to postpone the solemn profession of vows is also granted to the Superior of the Novitiate house, with the consent of the Master of the Novices and two Religious who are distinguished in the Institute:'" we were warned that the term of twenty-five years was defined in such a way that it could not be extended. It did not seem fitting to consider a case in which one

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who enters Religion has exceeded the age of 25 years; for, in cases which rarely occur, it seemed appropriate to invoke the saying: "The Praetor does not concern himself with trivial matters." Especially since conformity to discipline and the observance of a constant law bring about many good things which are not derived from a relaxation of the law.

THOSE POINTS WHICH SPOKE TO THE CONTRARY WERE NOTED. – On the other hand, it seems that the intention of the Legislator in those Letters was primarily directed towards the flourishing youth who are accustomed to embrace the Religious state, so that, after a longer interval of time, they may be more safely admitted to the solemn profession. But the causes for which the solemn profession is postponed are not lacking in those who are advanced in age; indeed, in adolescents, vices, if any have been contracted in the world, are more easily eradicated than...

[*Latin ed. p. 162*]

162 CONCERNING THE DECLARATION REGARDING APOSTOLIC LETTERS. In adults, as experience testifies. Therefore, if the Legislator has not sufficiently considered such cases, in which those of more advanced age enter Religion, there is room for a declaration, or dispensation, according to the circumstances of places and persons. Especially since there are Regular Orders which extend the vows of simplicity beyond the age of 25 years; nor is such an extension forbidden to them, which is reserved by the words: unless...the profession of the simple vows has already been granted for a longer time. Indeed, the abominable vice of drunkenness, which prevails in the regions of Americae, which by its very nature diminishes and subverts human dignity, and the spiritual and temporal damages which it entails, seem to be causes for considering a derogation of the law for those places. Having considered these and other matters generally, the following questions are to be resolved: I. How and in what way should one first respond to the questions raised by superiors? II. How and in what way should one second respond? ANSWER. – The Holy Congregation concerning the Status of Regular Canons, after deliberation in a meeting held on August 19, 1866, decided to respond as follows: To I, negatively. To II, to appeal in each individual case. FROM THE PRECEDING: I. Although the faculty to extend the three-year period of simple vows to superiors of Regular Institutes, about which mention is made in the encyclical letters, is granted, this same faculty should be considered entirely denied if those who have completed the age of 25 years have already professed simple vows. II. This is all the more the case if those who enter Religion have already completed said age, unless another Order has granted them permission to postpone the solemn profession further. III. A particular faculty granted beyond the prescribed limits is not extended, although reason might seem to support

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the law.

[*Latin ed. p. 163*]

163 FROM THE SACRED CONGREGATION OF RITES, AUGUSTODONFJ. OR AUGSBURG. CONCERNING THE CANONIZATION OF THE BLESSED MARGARETA MARIA ALACQUE, VIRGIN, MONIAL, PROFESSED OF THE ORDER OF THE VISITATION OF THE BLESSED VIRGIN MARY OF SANCTI FRANCISCI, ON A DOUBT. DECREE. "Having been presented by the Most Reverend and Illustrious Father Canon Dominic Borghi (1), Honorary Chamberlain to the Most Holy Lord Pope Pius X, Postulator of the Cause of the aforementioned Blessed MARGARETA MARIA ALACQUE, and having considered the written petition submitted by the aforementioned Cardinal of the Sacred Congregation of Rites (1), Linus and Reifius, Father Canon Borghi, Postulator of this beloved virgin, who, inflamed with the love of the Divine Heart, aspired to the very source of love, saying: "O God of my heart, to You my heart!", it has been deemed fitting to present to the Most Reverend and Illustrious Congregation of Rites a petition that this cause be reopened. We believe it will be pleasing to our readers if we explain the content of such a petition, which is expressed in the following words: Most Reverend and Illustrious Lord, 1. "Those things which are heavenly, divine, and immortal, the world is accustomed to despise, because it does not see them nor know them, and, fixated only on those things which are perceived by the senses and which affect the body with pleasure or sorrow, it keeps its face turned towards the earth, preferring to be in the dust rather than in the pure air, rather to be among beasts than among Angels. This, which is the height of folly, is often called wisdom by many, and with empty and deceitful words, it deceives and leads astray many of those who are devoted to the sublime teachings of Christ. These delusions could easily be refuted if one were to consider those solid foundations upon which the Christian religion is based; but to more powerfully expose this perversion and this impudent deception, it often happens that God, for the sake of certain faithful and innocent souls, reveals those things which are heavenly and invisible in wondrous ways..."

[*Latin ed. p. 164*]

1 64 AUGUSTUDUNEN. OR AUGSBURG. The Prefect of this Cause, reporting at the Ordinary Sessions of the Sacred Rites held today at the Vatican, proposed the following question: - Should a Commission for the Re-examination of the Cause be appointed in this case, and to what effect? - Most Eminent and Most Reverend Fathers, entrusted with the safeguarding of the sacred rites, let all be manifested and exhibited with the utmost clarity, so that this testimony may subsequently be verified by others, strengthening the faith of the weak and refuting the falsehoods of the unbelievers.

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These most blessed souls can testify, as Paul did, that they have seen Christ (1 Corinthians 15:8), and recount the visions and revelations of the Lord (2 Corinthians 12:1), and they can also invoke the words of Peter, saying: "You have not followed cunningly invented tales, but you have been eyewitnesses of the power of our Lord Jesus Christ" (2 Peter 1:16). But they have become speculators of such magnitude.

2. Among those endowed with blessedness and divine charisms was the Venerable Margherita Maria Alacoque, to whom the Most Holy Pope Pius IX, with the approval of all good men, granted the heavenly honors after a long deliberation, on the first day of October in the year 1864. This humble virgin, who had dedicated herself to divine service from a young age, was so beloved by God that one knows not whether to marvel more at the graces by which she was able to exercise all virtues with such outstanding and heroic fervor, or at the supernatural gifts with which she was so abundantly endowed, that she seemed to desire to spend this mortal life more among the angels in heaven than among men on earth. Indeed, this girl and young woman endured the most severe struggles of the world, the flesh, and the devil, and, with God's help, she emerged victorious. She suffered much from her own people and from those in her household, but she preserved her soul in patience. She bore the affliction of human envy, and God, moved by the sweetness of His love, drew her to the sacred cloister.

3. There, following the most wise rules and institutions of Saint Francis de Sales, this blessed woman, having withdrawn from the world and completely devoted herself to God and her Spouse, behaved in such a way that she shone as an example of all virtues among her sisters, and offered a perpetual holocaust of her mind and body to God, as long as she lived. Although she was not aware of any serious wrongdoing on her part, she subdued and mortified her most innocent flesh with constant fasts, vigils, and scourges. Renouncing her own will, she received rebukes and insults with equanimity, and, exercising herself in the most humble services, she sought to prevent, rather than repel, all occasions of vanity and pride. A lover and cultivator of poverty, she not only willingly relinquished all that she had or could have had, and rejected the annual pension offered to her, but, embracing all the inconveniences of poverty, she never sought anything when she felt she lacked something necessary, and she preferred the most wretched and contemptible clothing and furnishings. Thus, she strove to conform herself to the image of her Spouse, embracing with eagerness those three things which we admire most in the Lord on the Cross: the pain of suffering, humility with dishonor, and the complete lack of possessions.

4. But as this most loving virgin diligently followed the path of the Lord's commandments and counsels, He expanded her heart and filled her pure soul with heavenly lights, and refreshed and enlivened her with wonderful visions. The secrets of God, which all flee from those who are not divine,

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were perceived by this humble and undeservedly despised virgin, and she gently revealed those who were concealing them, and she revealed the hidden things.

[*Latin ed. p. 165*]

AUGUSTODUNUM, OR AEDUEN. After considering the matter, they deemed it necessary to write: "If it pleases the Most Holy [Father], let it be so." On September 1, 1866. Having faithfully reported all of this to the undersigned Substitute of the Congregation of Sacred Rites, His Holiness, Our Most Holy Father Pius IX, was deeply moved by this. He often foresaw what was to come, clearly foretelling events to alleviate anxieties, to guide prudent decisions in matters of doubt, or to warn against impending evils. He also knew the fates that awaited the souls of the deceased, discerning invisible regions of glory, purgation, and eternal punishment, and, compelled by obedience, revealed these things to those who inquired. At times, it was even granted to him to see choirs of angels, surrounded by celestial light, and even the Queen of Heaven, the Blessed Virgin Mary. Moreover, he often beheld the Most Holy Humanity of Christ Our Lord, and enjoyed the most delightful sight and conversation with Him, from which He revealed the secrets of the divine love that burns in His Heart, and, with flames erupting from it, He kindled the hearts of men, urging them to return to the love of God, and to follow the most sacred Heart of Jesus with pious devotion.

5. "Given so many favors and burning with such charity, it is incredible how much she grew in the pursuit and emulation of all virtues. She desired to remain longer with the patient Christ, and therefore, partly weakened by afflictions and austerity, and partly consumed by the fire of holy love, she reached only her forty-third year, and, longing to be dissolved, she peacefully fell asleep in the Lord on the sixteenth day before November, in the year of salvation one thousand six hundred and ninety. After her death, she received the highest honors. Especially after the Most Holy Pope granted her public veneration with the title of "Blessed," the name of Margherita Maria became renowned among the faithful. As a powerful intercessor with God, who loved her so much, she was invoked in public and private calamities everywhere. And there was no reason for false hope, since, while she lived, she always strove to encourage everyone to have boundless trust in the divine love and goodness, as if it were a sign. Therefore, at first, rumors of graces and healings that were obtained through the intercession of Blessed Margherita began to spread, then a more solid reputation grew, and the voices of miracles increased. Finally, the knowledge of these things became certain, and was confirmed by the most reliable testimonies.

6. These events were seen by prudent men as a divine warning, urging God's chosen one to be called to a higher degree of honor, so that the noble example of charity might be celebrated among the faithful at a time when

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the insane fury of the wicked was attempting to instill hatred of God in the hearts of men (a horrifying thing!). Therefore, the most illustrious and most religious Archbishops of Gaul, with great zeal, urged the Supreme Pontiff through letters and prayers, to deign to grant a commission for the resumption of the cause, and to initiate proceedings that would properly lead to the canonization of Blessed Margherita Maria. It is clear from their letters that this continuation and growth of fame, as testified by Benedict XIV, often moves the Apostolic See to grant the resumption of the cause (Bened. XIV, Lib. 2, cap. 38, no. 3). This is affirmed by the Most Reverend Louis James de Bonald, Archbishop of Lugdunensis.

[*Latin ed. p. 166*]

166 AUGUSTODUNUM. OR AEDUEN. Having received the approval of the Congregation, she deigned to sign with her own hand the Commission for the Re-examination of the Cause of the Blessed MARGARET MARY ALACOQUE, Virgin. On the 6th day of the same month and year." At the place [signed] C. Episc. Pórtuen. and S. Rufinae Card. PATRIZI S. R. C. Prefect. For the Reverend Father DOMINIC BARTOLINI, Secretary. Joseph Ciccolini, Substitute. The words are: "As the fame of the sanctity, virtues, and miracles of the Blessed Margaret Mary Alacoque has increased... so too has the devotion of the faithful towards her, and it increases daily. And this has not happened only in Gaul, but in other parts of Europe, for many suppliant letters have been given by pastors of the Church, who in Italy, Switzerland, Belgium, Spain, England, Ireland, and even in the island of Crete, have acknowledged the increased veneration of the faithful towards the Blessed Woman. In order to excite the faithful more vehemently to this devotion, that is, to inflame them with charity towards Our Lord, which, if it takes deep root in the hearts of men, all the best, most fortunate, and salutary things can be promised and foretold. The hatred with which the unbelievers and the impious pursue Christ has produced these evils which we see and suffer; inflamed charity towards Him can heal these evils, restore what has been lost, and turn the worst of things into good. 7. "In order to increase and promote this fame and veneration, the devotion of the faithful towards the Most Holy Heart of Our Lord Jesus Christ has greatly contributed, which has grown so much that several dioceses of Gaul, as testified by the Most Reverend and Most Reverend Cardinal Clemente Villecourt in his letters to the Supreme Pontiff, have consecrated themselves to this Most Holy Heart. But who, when exercising this pious devotion, does not also recall the memory and name of the Blessed Margaret Mary, who devoted so much effort to its propagation? Indeed, from the canonization of the Blessed Woman, many of the most distinguished men, who have offered suppliant prayers, foretell great good for the Church of God, because that solemn act will be of great benefit. 8. "Therefore, with eager confidence, we implore this Sacred and Most Excellent Senate with fervent prayers, that

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it may favorably respond regarding the signing of the commission for the re-examination of the cause, as the Most Reverend Archbishops and Bishops mentioned above, and also other most noble Orators (whose letters we have delivered to the Most Reverend Prefect and Relator), especially the Venerable Order of the Visitation of the Blessed Virgin, of the Salesian Institute, and in its name, the Most Reverend Prelate, Dominicus Canonicus Borghi, the Postulator of the Cause, also implore again and again." Wherefore, etc. HILABIUS ALIBRANDI AL)V. PHILIPPUS CARLINI.

[*Latin ed. p. 167*]

167. The cult rendered to the Servant of God Paula Montaldi, a nun professed of the Second Order of St. Francis, known as the Clarissan nuns, has been observed from time immemorial. Decree. "Because the Reverend Father Bernardine of the Crypts, General Postulator of the Order of Friars Minor of the Observance of St. Francis, having considered that valid proofs demonstrate that the aforementioned Servant of God, Paula Montaldi, has always, from time immemorial to the present day, received public ecclesiastical veneration, he requested that, in the Ordinary Sessions of the Congregation of Sacred Rites held today in the Vatican, from the Most Eminent and Reverend Cardinal Joseph Bofondi, Relator of the Cause, the following question be proposed: 'Does it appear that public ecclesiastical veneration has been rendered to the aforementioned Servant of God from time immemorial, or does the case fall under an exception from the Decrees of Pope Urban VIII?' Furthermore, the Most Reverend Fathers entrusted with safeguarding the Sacred Rites, after examining the presented proofs with care, and after hearing the voice and writings of the Reverend Father Peter Minetti, Promoter of the Holy Faith, judged that it is affirmative, that is, that the case falls under an exception. On September 1, 1866." After a subsequent report was made to His Holiness Pope Pius IX, regarding the foregoing, His Holiness, approving the judgment of the Sacred Congregation, confirmed with His Apostolic Authority the public ecclesiastical veneration rendered from time immemorial to the Blessed Paula Montaldi, Virgin. On the 6th day of the same month and year. C. E. p. Portuen. and S. Rufinae. Cardinal PATRIZI, S. R. C., Prefect. *Signum*. For the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute.

[*Latin ed. p. 168*]

"In the Congregation of Indulgences and Sacred Relics, in Milan, on the 15th of March, 1852. "Since, near the Basilica of the Holy Apostles and Saint Nazarius in the city of Milan, in the year 1845, four tombs were discovered, of which one contained the bones of a single human body, and another contained a portion of bones from another body, together with a vessel containing blood, the Most Reverend Cardinal Charles Caietan Gaysruck, esteemed Archbishop of the archdiocese of Milan, proposed the following

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questions to this Sacred Congregation of Indulgences and Sacred Relics: I. "Whether the discovered remains should truly be considered those of Martyrs; and in this regard, to affirm it: II. Whether they should be exposed for the public veneration of the faithful." Therefore, the Most Reverend Fathers of the aforementioned Sacred Congregation, in general meetings held at the Vatican buildings on the 16th of February, 1852, having considered the most faithful account of the discovery of these remains, having also heard the opinions of the Consultors, and having carefully deliberated on all matters, responded affirmatively to both the first and second questions. And concerning all of this, the Most Holy Pope Pius IX, through me, the undersigned Cardinal Prefect of the same Sacred Congregation, presented a report in an audience on the 15th of March, 1852, and His Holiness graciously approved the aforementioned resolution. "Given in Rome, from the Secretariat of the aforementioned Sacred Congregation of Indulgences." F. CARD. ASQUIGNUS, Prefect. A. COLOMBO, Secretary. "A summary of the opinions of the Consultors. In the examination of the matter at hand, several documents were presented to the Sacred Congregation, which most clearly confirmed the historical discovery of the cemetery, namely, those prepared by the authority of the Bishop, and provided with the testimony of witnesses of the utmost trustworthiness."

[*Latin ed. p. 169*]

IN MILAN. Section 69. Furthermore, learned dissertations were presented, which were printed by skilled men of that time and inserted in public journals, in which much was adduced, both historically and legally, to ascertain the truth of the matter; along with fabricated examples of monuments, which are commonly called "facsimiles." All of these things, before being properly discussed by the Holy Congregation, were entrusted to two most skilled men in sacred archaeology for examination (1). Their opinions, as they primarily concern the discovery of notes in the presented documents that would establish the authenticity of the relics in this case, will be considered by us only as if they were written by a single Consultor, and we will deliberate only on those that appear to lead to the same end, with due clarity. In Milan, in the early centuries of the Church, it was clearly established that a Christian tomb existed in the place of the Basilica of the Holy Apostles and of Saint Nazarius, and in its adjacent area; this was evidenced both by the oldest traditions of the Milanese Church, as reported by the authors of the dissertations mentioned above, and by the fact that Saint Ambrose himself built a basilica there, which was later named after Saint Nazarius, because his body was received there. In the fourth century, shortly after the Church was restored to peace, churches began to be built above or near cemeteries, as public monuments testify to have also happened frequently in Rome. We shall omit details concerning the form of such tombs, which pertain more to erudition than to the

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necessity of the present matter; from all of this, the Consultors sought to establish with certainty, and in this there is no room for doubt, that the tomb in question, and which is referred to the time of persecution, is Christian in nature. No less clear was the fact that the bodies buried there belonged to Christians. This was most clearly evidenced by the symbols found there, and a long series of which was presented by the Consultors with the aid of examples taken from the same tomb; these symbols are customarily used only in the tombs of Christians, and no one has ever questioned this. However, the main point of the question concerned the tomb in which the bodies of martyrs were said to be preserved. Indeed, (1) The opinions were written on this matter by the Most Reverend Dominicus Bartolini and by the Reverend Father Joannes Seplius, of blessed memory.

[*Latin ed. p. 170*]

170. In Milan, the general signs of Christian tombs, which were the most certain, were to be sought. However, it was necessary to ascertain whether a tomb attributed to Martyrs shone with signs of martyrdom with equal certainty. Here, likewise, a long and sufficiently learned examination was conducted by experts regarding the instruments of martyrdom, which had been found inscribed in the very tomb; namely, the signs of chains, and of an iron stake from which the body of the Martyr was suspended, as well as four triumphant crowns, a cross of Saint Andrew, and similar things. These, and other things which we omit, were likewise found in other tombs of Martyrs, both within the city, and although they seemed to be signs of martyrdom, they could not, without other certain signs, induce certainty regarding the relics of Martyrs. But in one of the four tombs, a vessel containing blood was found, together with two human bodies, one intact, and the other partially decomposed. Indeed, a practice lasting for many centuries in the city, and confirmed by a decree of the Sacred Congregation (1), is that, when investigating the remains of Martyrs, a glass phial, or a figuline stained with blood, or at least bloodstains, which remained affixed either inside or outside the tombs, were considered the most reliable signs. However, some learned men considered that other signs, besides blood, could be admitted to distinguish the Martyrs themselves. But in order to proceed with prudence in this matter of such importance, Pope Clement IX decided to choose a special Congregation, consisting of Cardinals of the Holy Roman Church, and other most learned men, and he entrusted to it the most serious examination of this matter. This Congregation, which afterwards took the name of Sacred Relics and Indulgenties, after considering all arguments, on April 10th of the year 1668, issued this decree: "When the Sacred Congregation for Indulgences and Sacred Relics was discussing the signs by which the true relics of Saints and Martyrs can be distinguished from false and doubtful ones, the same Sacred Congregation, after carefully examining the matter, decided that the palm and the vessel

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anointed with their blood should be considered the most certain signs; and the examination of other signs was postponed to another time." This decree was faithfully observed for almost two centuries, although in the past century, some select writers have doubted the sign of the blood phial; against whom, especially, the most serious authority of Benedict XIV was opposed.

[*Latin ed. p. 171*]

In Milan, in the year 171, there was no stronger argument than the blood vessel. This is evident from almost all the histories of the Martyrs, from which it is clear that everywhere among the faithful, it was customary to diligently collect the blood flowing from their members and to preserve it in their tombs as a testimony of the death they endured for the sake of the Christian faith. It cannot be denied that the palm branch inscribed in the tomb may also be considered an indication; for it could happen that when the opportunity to collect blood was lacking, the palm branch was substituted for the vessel. However, whatever the case may be, Benedict XIV, in order to ensure that the veneration of the Martyrs was carried out most safely, forbade the bodies to be placed with sola pelle teris Apostolicis [i.e., with only the Apostolic vestments] in the Chapter of the Metropolitan Church of Bologna, dedicated to Saint Proclus the Martyr, in the cemetery of Thraso, along with the Vase of Blood that had been unearthed. "To these [bodies] the cult and the title of Saint are due, because, without a doubt, it has never occurred to anyone, however keen his intellect may be, and eager to inquire, as they say, to find a knot in a reed, that is to say, it has never occurred to anyone to doubt that the body found in the Catacombs, with a vessel of blood, either full or stained, is the body of someone who has suffered death for Christ." But in our own days, other men have arisen, equally endowed with learning, and very skilled in the studies of sacred archaeology, who, through writings, or even published volumes, have argued against the blood vial as an undoubted sign of martyrdom. However, the Most Holy Lord Pope Pius IX, without hesitation in the strength and authority of that decree, and seeing that the difficulties of learned men were being disseminated in both Catholic and heterodox publications, wisely decided to subject such difficulties to a rigorous examination in a special Congregation of Sacred Rites, in order to prevent any scandal among the faithful. This special Congregation, constituted by several Cardinals of the same Congregation of Sacred Rites, official prelates, and select ecclesiastical men, endowed with piety, doctrine, prudence, and experience, having before its eyes the entire series of arguments, and also the faithful report of the same Secretary, after carefully weighing all things through diligent inquiry, on November 27th of the present year, answered the following two proposed doubts: I. "Should glass or clay vials stained with blood, which are found in the tombs in sacred cemeteries, either inside or outside the tombs them-

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selves, be considered a sign of martyrdom?" II. "Should one adhere to or depart from the decree of the Sacred Congregation of Indulgences and Relics of April 10, 1668?" It answered the first question affirmatively. It answered the second question with a reservation in the first. Therefore, it declared that the decree of the year 1668 should be confirmed. "After the aforementioned matters had been accurately presented to the Most Holy Lord Pope Pius IX by the undersigned Secretary, His Holiness approved the judgment of the Sacred Congregation, and confirmed it, and ordered the present decree to be published." On December 10, 1863. C. Bishop of Portua and S. Rufina, Cardinal PATRIZIS. R. C. Prefect. D. Bartolini, S. R. C. Secretary.

[*Latin ed. p. 172*]

172 MILAN. The discovery of martyrs was indicated by the presence of blood. However, in our case, since the most certain and first sign was present, it was rightly argued that if a vessel containing blood was considered an undeniable sign of martyrdom in Rome and elsewhere, there was no reason why the same should not be established in Milan, especially in that city where Saint Ambrose had used the same sign to identify the bodies of the saints Vitalis, Agricola, Gervasius, and Protasius, and to place them in public veneration, as he himself testifies. It is untrue that, as heretics babble and some even among Catholics rashly assert, such vessels contain unguents, perfumes, incense, bread, and wine, and perhaps even the Eucharist; and so on. However, since we are only concerned with the present question, the testimony of a chemical expert, confirmed by oath, established that the substance found in the vessel truly belonged to blood: for these are the very words of that same expert, which we quote verbatim: "Upon examining the residue deposited, I found the most certain presence of iron, which clearly indicates that no other living fluid could have been contained in the vessel in question, except blood; for that metal is constantly found in blood after the separation of fibrin." Furthermore, the consultant asserted that he knew from experience that in Rome, in similar vessels, the most skilled chemists had produced the same result on many occasions. A great weight was added to these reasons by the conjunction of the mutilated body with the whole. For it is customary to bury a man with his entire body. However, in battle, and especially where the soldiers of Christ had bravely fallen, it was not always possible to collect all the dismembered and torn limbs of the same body. Therefore, Christians, if possible, would entrust the entire body to burial; but if not, they would bury the limbs that they could, in order to preserve at least the relics. The present fact was confirmed by two examples, as asserted by one of the consultants, who presented himself as an eyewitness, and who promised, in his work in Italian: "Monumenti de' primitivi Cristiani," to reveal what he had observed in the performance of his duty, which was to oversee the

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preservation of the cemeteries.

[*Latin ed. p. 173*]

MILAN. 173. A few years ago, as he himself testified, two niches were discovered in the two cemeteries of Saint Agnes and Saint Cyriacus, in which, besides entire bodies, parts of limbs belonging to other bodies were found, and he described these in detail; indeed, in the cemetery of Saint Agnes, two entire bodies were found, and the head of a third cadaver was included; in the other tomb, besides two entire bodies, the femur, tibia, and foot of a third cadaver were discovered. From this, the Consultor seized the opportunity to refute certain enemies of the Catholic faith who boast that our sacred cemeteries are entirely devoid of the bodies of martyrs, and that vessels of blood should not be considered as signs of martyrdom. Indeed, those two niches were unearthed solely because they contained vessels of blood. Therefore, it should be argued as follows: No one will deny that the dismembered limbs found in the tombs of the ancient cemeteries belong to the bodies of martyrs, since they are, in themselves, the most certain proof of martyrdom; therefore, a vessel of blood placed outside such a tomb was placed there in order to remind those who lie within that they have undergone martyrdom; therefore, just as the vessel provides evidence by which we recognize a martyr, so the dismembered and mutilated limbs provide evidence that the vessel of blood is the safest testimony of martyrdom. Therefore, if niches are frequently found in our sacred cemeteries containing vessels of blood, and others containing torn and mutilated limbs, it is clearly deduced that these niches are not entirely devoid of the bodies of martyrs. Furthermore, since these two signs in the Milanese tomb occurred simultaneously, there was no reason to hesitate in giving an affirmative answer in this case. FROM THESE, WE CONCLUDE: I. That the Church, in past centuries, in which the blood of martyrs flourished (1) and triumphed, did not fail, as far as it could, to preserve the memory of those martyrs. (1) Every persecution of the Church gives way to the progress of the same Church. If the persecution is partial, that is, if it refers only to a certain part of the integral Church, and so that a part of the faithful remains unharmed, the Church often flourishes and grows in other parts of the world, like a pound, of which one ounce is cut off.

[*Latin ed. p. 174*]

174. IN MILAN, the bodies, and the lacerated remains thereof, were reverently laid to rest in carefully prepared tombs, with inscriptions added so that the memory of the martyrs, which served as an example and a source of veneration for others, would not be lost. II. The Roman See, as a most certain sign of the endurance of the martyrs, has always possessed glass or clay vials, or at least crusts of blood, which were affixed either inside or outside the tombs. The greater the weight, the higher the other is raised.

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But if the persecution is not partial, but concerns the entire Church, or particularly the Vicar of Christ on earth, then this very persecution carries with it the progress of the Church, as happened in the early centuries of the Church, when the blood of the martyrs was to be considered the seed and the beginning of Christians. In these present days, in which the successor of Peter, the master of the universal Church, is vehemently attacked by new forces of diabolical malice, so that the Church may be suppressed with him, the progress of the Church is by no means lacking. Indeed, how great this progress is, Paul seems to have described most excellently in his letter to the Philippians, chapter 1, verses 12 and following, where he expresses how much his bonds have contributed to the spread of the Gospel: "But I would you know, brethren, that the things which happened to me have turned out to the furtherance of the Gospel; so that my bonds have become manifest in all the palace, and in all other places; and that many of the brethren, trusting in the Lord because of my bonds, do become bold to speak the word without fear." "Some indeed preach Christ even from envy and contention, but some also from good will. The latter do it sincerely, knowing that I seek to promote the Gospel; the former proclaim Christ from selfish motives, thinking that they may cause me to suffer by my present circumstances. But what does it matter? Whether it is pretended or sincere, Christ is proclaimed; and in this I rejoice, and will rejoice." Furthermore, in this present time, in which almost throughout the entire world people think and speak about the Vicar of Christ, and proclaim Christ and His living Church, making it more flourishing and vigorous, all of which are signs of a greater and more glorious triumph.

[*Latin ed. p. 175*]

175 CONCERNING THE ECCLESIASTICAL IMMUNITY. RESTORATION OF CLERICAL STATUS. Dated April 2nd and August 22nd, 1843. Summary of the case. A certain Titius, who had relinquished his clerical status as of the year 1800, had married, and, remaining a widower, practiced the art of pharmacy. It happened that he sent medicine to two patients, belonging to separate and distinct families, who requested it; this medicine was found to be mixed with poison. For, after ingesting the medicine, the patients were seized with severe pains and died shortly thereafter. When news of this became known, the authorities of that place, in the exercise of their duty, instituted an investigation and discovered the nature of the poison by which the patients had died. When the deaths of these individuals were publicly attributed to the malice or negligence of the pharmacist, Titius fled. Meanwhile, the authorities did not cease from gathering evidence relevant to the matter, in order to initiate legal proceedings. Indeed, while in a state of hiding, Titius submitted a petition to the Episcopal Court, requesting that the cause be brought before a secular tribunal, and that he be judged in the ecclesiastical court, claiming that he had restored his

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clerical status, and that, as a cleric, he was entitled to the privileges of the forum. The Episcopal Court, considering that this involved the death caused by the act of poisoning; that it involved a cleric who, prior to such an act, did not possess the habit and tonsure, according to the decree of Pope Benedict XIV, which begins: "Otherwise," rejected the petitioner's supplication. But Titius did not remain silent, and he petitioned the Sacred Congregation for Immunity, requesting that the proceedings be completed and that the cause be judged in the ecclesiastical forum, adding certain arguments. The Sacred Congregation, as is customary, after hearing the report of the Bishop, and after considering the arguments by which Titius maintained that the privilege of the forum applied to him, dismissed the case, leaving the matter in doubt. 1. Disputatio. TITIUS' DEFENSE. Titius initially questioned the procedure of the Episcopal Court, which, without any knowledge of the facts, had rejected his petition.

[*Latin ed. p. 176*]

176. RESTORATION OF CLERICAL HABIT. The speaker objected. However, since the episcopal court refused petitions regarding the restoration of the clerical habit after a dismissal, Titus maintained that the present question concerned the restoration of the clerical habit, which he considered sufficient to regain the benefit of the forum. To demonstrate this, he cited resolutions found in Ferraris, *Bibliotheca Canonica*, under the word "Clericus," numbers 31 and 32, where the following is read: "A cleric who, before imprisonment, had restored his habit, enjoys the benefit of the forum," *S. Congregatio Immunitatis in Rossanen*, March 18, 1631. "A cleric restoring his habit, after a pretended offense committed by him, is entitled to the benefit of the ecclesiastical forum, both with regard to his person and his property, even according to the constitutions of the Kingdom," *Sacra Congregatio Immunitatis in Marsicana*, December 11, 1646. "And although a cleric may restore his habit without any other permission from the Bishop," *S. Congregatio in Orilana*, August 18, 1654. Titus added that it could not be affirmed that such resolutions had been revoked by the Constitution *Alias Benedicti XIV*. For in that Constitution, the Supreme Pontiff prescribed that a cleric who, having abandoned the clerical habit, is a murderer, does not enjoy the benefit of the forum, and that he cannot restore the clerical habit after having undergone the full penalty for a completely sacrilegious crime. Therefore, he did not prohibit the restoration of the habit before the cleric was judged guilty. Giraldi, in *De Poenis*, page 308 of the first edition, agreed, writing: "If a cleric lays down his habit in all respects, and returns to the state of a layman, and commits a crime in that state, even if the homicide is voluntary, he can restore the habit again and thus enjoy the ecclesiastical privileges." Furthermore, Titus continued, the exception in which a restoration of the habit is deemed fraudulent did not apply: for concerning such an exception, Benedict XIV wrote with other

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authors in his work *De Synodo Dioecesana*, I, 12, chapter 2: "A cleric is presumed to have restored the habit which he had laid down, fraudulently, when he puts it on after having been apprehended by secular authority, and after having escaped from prison, or after having been released from prison, having given security." These circumstances were not present in the present case. Finally, the speaker stated that in the aforementioned Constitution, Benedict XIV had taken away the benefit of the forum from a murderer; therefore, he...

[*Latin ed. p. 177*]

REINSTATEMENT OF CLERICAL STATUS. 177. Indeed, he who is truly guilty of homicide, and of voluntary homicide, and moreover, neither the Court which had rejected his appeals, nor the Treasury, pronounced anything; hence, it was concluded that, since there was no proof of the committed crime, the privilege could not be declared revoked. MATTERS WHICH WERE DISPUTED EX OFFICIO. — It was observed, ex officio, that in Clairac, which had not observed the requirements established by the Council of Trent, the cleric, by that very fact, lost the privilege of the forum, so that he could not invoke its favor, as was declared in a certain case in Liège, approved by Urban VIII., as Giraldi explains. *Iuris Pontif. part. 1 ex lib. 5 Decret, pag. 770 et part. 2 sect. 93 §ag. 939*. For, such a loss of privilege is not to be considered a penalty, as the Authors maintain; as Laurenius de Foro compet. p. 173 n. 7 says: "The privilege of the forum is lacking, not *per modum privationis, seu quod ideo privetur quis dicto pri-vilegio* [by way of deprivation, or because someone is therefore deprived of said privilege], but *per modum deficientia formae, quia constitutio illa Tridentini non est lex poenalis, sed constitutiva formae requisitae ad hoc privilegium* [by way of a deficiency in form, because that constitution of Trent is not a penal law, but a constitutive form required for this privilege], as Suarez states in *lib. 4 Defens. fidei c. 27 n. 13*, and with him Piringhius in this title, n. 9: *vel per modum deficiens conditionis a Concilio ad dictum effectum obtinendum requisitae* [or by way of a deficient condition required by the Council to achieve said effect]." Moreover, although Titius had reassumed his clerical status, it did not seem that this reinstatement could be of benefit to him in this case. For, the case was to be judged according to the terms of the Constitution: *Alias. Benedicti XIV., et Clementis XII.*, which begins: *In supremo iustitiae solio*. Indeed, the Benedictine Constitution contains this clause: "Communita § . 2: *quacumque diversa ac etiam contraria iuris canonici, et Apostolicarum Constitutionum dispositione, seu interpretatione, nec non consuetudine haud refragante* [whatever is different, and even contrary to the disposition or interpretation of Canon Law, and of Apostolic Constitutions, and also to a custom that does not give way]." Therefore, it seemed that the resolutions cited from Rossanen, March 18, 1631, and

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from Marsicana, December 11, 1646, could not be invoked in this case; and that it was less relevant to investigate whether Titius had reassumed his status without fraud. In the cited Benedictine Constitution, three statutes are to be observed in cases of homicide: 1. that a minor cleric who has not observed the requirements of the Council does not enjoy the privilege of the forum, and remains deprived of it, even with the Bishop's faculty of withdrawing the case from the secular tribunal being removed; 2. the reinstatement of clerical status is prohibited, even after the penalty has been expiated, *Acta, tom. II, fase. XV. 12*.

[*Latin ed. p. 178*]

178. RESTITUTIO HABITUS CLERICALIS. Un clero minor, qui habitum clericalem dimisit, potest eum postea recuperare, una volta che avrà completamente expiato la pena per il delitto commesso: 3. È compito del Vescovo determinare se il colpevole, prima di commettere l'omicidio, abbia osservato le disposizioni del Concilio di Trento. Tuttavia, da alcuni indizi non trascurabili, si sospettava che il veleno fosse stato somministrato non per puro caso, e che, almeno, una colpa fosse imputabile a Tizio. Dopo aver considerato queste e altre circostanze, si propose di risolvere il dubbio: "Nel caso e nelle circostanze esposte, Tizio gode del privilegio del foro?".

RISOLUZIONE. – La Sacra Congregazione, a cui sono affidate le questioni di immunità e le controversie giurisdizionali, dopo aver discusso la questione in assemblea il 26 aprile 1843, ritenne opportuno rispondere: negativamente. Tuttavia, Tizio, non scoraggiato, chiese un nuovo esame e lo ottenne, sostenendo, tra le altre cose, che la Costituzione Benedettina non si riferisse agli omicidi commessi accidentalmente, ma alla morte causata da deliberata volontà, e che questo non fosse il caso della morte di due malati. Pertanto, gli atti del processo, che era stato iniziato, furono presentati alla S. Congregazione, e fu posto il dubbio: "È necessario mantenere o revocare le decisioni del 26 aprile?". La S. Congregazione, dopo aver nuovamente discusso la questione il 22 agosto 1843, rispose: "È sospeso, e si stabilisce che, con il processo rinviato al tribunale competente, si ordini al Governatore N. di, in nome della Chiesa, completare legittimamente il processo fino alla sentenza, e quindi di trasmettere il processo alla S. Congregazione per la definizione della questione giurisdizionale." Tuttavia, questa questione non riapparve più.

Da quanto precede, si deduce: 1. Sebbene, secondo il diritto comune, un clero minor che ha rinunciato all'abito clericale non abbia il diritto di invocare il privilegio del foro, tuttavia, la riacquisizione dell'abito, se non compiuta con intento fraudolento, gli consente nuovamente di godere del privilegio del foro (1).

(1) Ho detto "secondo il diritto comune", perché, se non ci fossero ostacoli gravi, dovrebbe valere secondo la norma, cioè secondo i santi canoni, in particolare del Concilio di Trento, e secondo le interpretazioni delle S.

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Congregazioni. Pertanto, qui non si tratta di leggi particolari.

[*Latin ed. p. 179*]

REASSERTION OF THE CLERICAL HABIT. 179 II. Indeed, even if the conciliar conditions are not cumulatively observed, a cleric, even though he does not possess the right to invoke the privileges of the forum, but wears the tonsure and serves, either in a particular office or by order of the Bishop, in matters pertaining to the instruction of the faithful, or wears the clerical habit and tonsure assigned by the Bishop, which are granted by the forum, or even if, with a tonsure, he is present in a school with the permission of the Bishop, or wears the habit of a minor order, after the Tridentine Council, or is present in a university with the permission of the Bishop, it will not be difficult to ascertain. For it seems (we always speak of clerics who are not in sacred orders) that it is more fitting for clerics to wear clerical garments, if it is permissible to speak in this way, and to observe external appearances, than to be concerned with the person. The Sacred Congregations, which authentically interpret the law of the Church, have constantly declared that all the conditions imposed by the Council of Trent must be observed, so that, unless these conditions are met, a cleric, whether minor or tonsured, does not have the right to invoke the privileges of the forum. In what cases, therefore, does a cleric not enjoy the privileges of the forum by decree of the Council? No warning is required in such cases. However, it must be noted, as Fagnanus states in his *Compendium*, n. 22 and following, that the words of the Council concerning the conditions to be observed, and other matters pertaining to the matter of the chapter "If anyone," and the forum of the Bishop, do not, according to the opinion of the Holy Congregation, constitute substantial conditions, as is demonstrated by the following explanation: "Indeed, because the quality of the license is slight, it is sufficient to observe what is better, namely, the tonsure, the wearing of the clerical habit, service to the Church, or obedience to the command." The intention of the Council, in requiring a license on that day, July 11, 1595, for the proper understanding of a cleric who is almost on the path to receiving higher orders, is not to cause him to wander here and there, but to ensure that the cleric enjoys the privileges of the forum, to require and to suffice with what is noted in the following chapters, so that he may obtain a benefit from the Church: that he wear the clerical habit, which is a privilege of the forum, without neglecting service to the Church, as Fagnanus explains in n. 23.

[*Latin ed. p. 180*]

f 80. RESTORATION OF THE CLERICAL HABIT. The privilege, however, does not abolish the Bishop's right to reprimand a cleric who is guilty in such a matter, provided that the cleric remains (1). III. In cases of homicide, a minor cleric who has not observed the requirements of the Council

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cannot, in any way, claim the privilege of the forum after the Constitution of Benedict XIV. IV. In the present case, the question seems to be reduced to these terms: whether the death caused by poison administered by Titius can be attributed to him. (i) The Holy Congregation of the Council, on January 21, 1594, declared: "Although clerics who are established in minor orders, unless they hold an ecclesiastical benefice, or who wear the clerical habit and tonsure, or who serve a church by order of the Bishop, or who are in a seminary, or in some school, or university, with the permission of the Bishop, cannot claim the forum of a lay judge; nevertheless, the Congregation of the Council did not consider that this prevents the Bishop from exercising his jurisdiction over such clerics who are still clerics." But what is to be understood by the words "provided that the clerics are still clerics?" This was explained in the case of Liège, on November 18, 1630, the resolution of which was confirmed by Urban VIII. "His Holiness approved the declaration made, that even clerics who do not have the requirements of canon 6 of session 23 of the Council, although they, as those who have violated the ordinance of the Holy Council, cannot themselves allege the privilege of the forum, nevertheless remain under the jurisdiction of the Bishops and Ordinaries, so that in cases in which those same Bishops have intervened, and also in cases in which they have not intervened, they may be taken from the hands of a lay judge, when those same clerics are still clerics, that is to say, if they have not been deprived of their clerical privileges by law or by a human declaration, with the necessary reservations." This declaration was again confirmed on August 1, 1634. "Having made a further report to the Most Holy Lord, His Holiness, in order to remove all difficulty, ordered that the aforementioned declaration, as stated above in the case of Liège, should be observed entirely."

[*Latin ed. p. 181*]

181 FROM THE SECRETARY'S OFFICE: THE PIOUS ARCHISODALITY UNDER THE TITLE OF THE BLESSED VIRGIN MARY ASSUMED INTO HEAVEN, ERECTED CANONICALLY IN THE CHURCH OF SAINT MARY IN MONTERONE OF THE NOBLE CITY, FOR THE HELP OF SOULS DETAINED IN THE FIRE OF PURGATORY. This pious Archisodality is already known throughout the Catholic world, although it is of recent institution. It numbers hundreds of other confraternities affiliated with it. It has been enriched with graces and privileges by the Most Holy Popes Gregory XVI of blessed memory, and Pius IX happily reigning, among which the most precious is the privilege of an altar in suffrage for any deceased Catholics, a privilege which, through a special grace of the Apostolic See, is granted to each confraternity and pious union affiliated with this Archisodality, as is evident from the following Apostolic Letters granted in its favor (1). POPE PIUS IX. FOR THE PERPETUAL REMEMBRANCE. It has come to our attention, as has been

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explained to us by the esteemed son Brixius Queloz, General Procurator of the Congregation of Secular Priests of the Most Holy Redeemer, that a pious Archisodality under the title of the Assumption of the Blessed Virgin Mary has been canonically erected in the church of Saint Mary, commonly called "in Monterone," belonging to the aforementioned Congregation of the City of Rome. Those who wish to obtain affiliation with this Archisodality, whose Moderator is the parish priest, and other church officials, must address themselves to the General Procurator of the aforementioned Congregation of the Most Holy Redeemer in Rome. The expenses for the affiliation, as well as for diplomas and other matters, are paid to the aforementioned Procurator.

[*Latin ed. p. 182*]

182. PIOUS ARCHISODALITY. The same esteemed son, mentioned above, was, by the most blessed Pope Gregory XVI, Our Predecessor, granted, by letters dated January 19th, February 12th, May 4th, and June 7th, 1841, indulgences and spiritual graces. Among these is the Apostolic privilege that the Masses celebrated at the altar of this Archisodality must be counted. Furthermore, this Sodality, by letters dated June 8th, was adorned with the title of Archisodality, and it was granted the faculty of aggregating other Sodalities of the same title and name, and of communicating to them perpetually the indulgences and other spiritual graces granted by this Holy See. However, those who then presided over the Archisodality considered that the Sodalities aggregated to their Archisodality could also participate in the aforementioned privileged Masses, without considering that the Decree of the Congregation of Venerable Brothers, Our Cardinals of the Holy Roman Church, entrusted with Indulgences and Sacred Relics, confirmed by Our Predecessor, Pope Benedict XIV, on March 10th, 1747, prohibits such participation. Moreover, We also deemed it fitting to enrich this Archisodality with new graces, and by a Decree of the aforementioned Congregation, which We confirmed on August 8th, 1869, We first remedied any defect that may have occurred in the aggregation of other Sodalities of the same title and name to this Archisodality with regard to participation in the privileged Masses; secondly, We granted that, notwithstanding the Decree of Benedict XIV mentioned above, the Sodalities aggregated to this Archisodality may freely and lawfully communicate the Apostolic privilege of Masses, together with all the indulgences. Furthermore, by another Decree of the same Congregation, dated March 26th, 1860, We extended the aforementioned Apostolic privilege of Masses, which previously benefited only the deceased members of the Archisodality, as well as the deceased members of the Sodalities already aggregated or to be aggregated to it, to all the faithful whose souls, united with God in charity, have departed this life; and We granted that the altar of the Archisodality, as well as the altars

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of the aforementioned Sodalities, may perpetually enjoy this privilege. Moreover, the aforementioned Brixius Queloz, General Moderator of the aforementioned Archisodality, most earnestly desired that the concessions granted to it by this Holy See may receive a further enhancement.

[*Latin ed. p. 183*]

PIOUS ARCHDIOCESAN ASSOCIATION. Two hundred and eighty-three [283] and other prayers which they have prepared for our consideration, so that we may, through the benevolence of the Apostolic See, confirm these and other spiritual graces through Apostolic Briefs. Wishing to approve these pious petitions, as far as in the Lord is possible, and confident in the mercy of Almighty God, and in the authority of the Apostles, Saints Peter and Paul, we, relying on the concessions granted by our predecessor, the blessed and revered Gregory XVI, in the aforementioned Apostolic Letters, and also those granted by us through the two aforementioned Decrees, the full and sufficient terms of all of which are expressed here without alteration, and which we now, by our Apostolic authority, confirm anew and perpetually, notwithstanding our own regulations and those of the Apostolic Chancery concerning the granting of Indulgences, and other Apostolic Constitutions and Ordinances, and all other contrary things whatsoever. Given at Rome, near St. Peter, under the Fisherman's Ring, on the ninth day of January, 1866, in the twentieth year of our pontificate. In place of the Seal, N. Cardinal Paracciani Claretti.

[*Latin ed. p. 184*]

APPENDIX VI. CONCERNING THE CATECHISM, OR THE TRADITION OF CHRISTIAN DOCTRINE IN THE CHURCHES OF REGULAR CANONS, NOT PAROCHIAL.

In the matter of the Sacred Visitation, which, for the sake of the salvation, especially of the people, we have previously mentioned on page 157, concerning certain parishes of this diocese, in which the people flock to the churches of the Regular Canons. From this, it follows that an explanation of the Christian doctrine should be given in such a manner as to edify the regular discipline. On this occasion, it is not to be passed over in silence that certain matters concerning the catechism were discussed in the Sacred Council on March 2, 1861. The Bishop N. in his report on the state of his diocese, stated: "In the diocesan synod, it was decided that on Sundays and other feast days, in the first Mass in all churches and public oratories, after the Gospel, before the priest recites, a short instruction should be read aloud, which contains what is necessary for the knowledge of the doctrine or the precept."

Before these doubts were answered, the same Bishop, in a new letter, reported that there were families of Regular Canons in his diocese, namely,

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four of the Order of the Capuchins; one of the Minor Observants; one of the Discalced Minor Observants; and one of the Minor Franciscans, who, they believed, were not bound to observe that synodal statute in the churches of their Order. If this were true, it would be futile for that decree, which is to instruct even the most rustic farmers who on feast days scarcely attend Mass, in those things which are necessary for the knowledge of the doctrine or the precept.

Interpellated in Rome, the Procurators General of the Orders replied that the Regular Canons of their Order freely observe the synodal prescription.

[*Latin ed. p. 185*]

185)ix vi. having conformed; therefore, he did not perceive that the Bishops could not, in any way, safeguard what is to be done concerning the question proposed to them. The Procurator, adhering to the Regulars, to the extent that they are subject to his jurisdiction concerning those matters which pertain to the privileges of exemption granted to the Regulars, concluded that the first question should be answered negatively. The general rule, as stated in book 13, chapter 4, number 5, is to answer negatively to the first question, and affirmatively to the second, for the sake of charity. However, the other Procurator considered that both questions should be answered negatively, firstly because the Regulars are not bound by the statutes of the diocesan synod, and secondly because he considered that the aforementioned synodal statute was contrary, in the same way, to the text of the Apostolic Constitutions which explain the decrees of the Order, its constitutions, and the decrees of the Council of Trent, session 22, decree and norms concerning the celebration of Mass, in which matters are subject to the jurisdiction delegated to the Bishop, according to the decision of Innocent IV.

Furthermore, if in session 22, chapter 8, concerning the sacraments, the Holy See, in the privileges granted to the pastors, nevertheless commands in certain cases, and in others, that they should expound something from what is read in the Mass, as is frequently done, the aforementioned Procurator noted that Fagnanus, in the cited book 9, enumerates these cases and recounts them individually. He also noted that such things are enjoined to pastors and others who care for souls, in chapters in which they are subject to the authority of the Bishop, from number 37 to the end. Chokier, in *Jurisdictio Ordinum*, in the following relations, question 45, and XIV, statutes and offices, volume 3, question 189, article 10, and book 9, inspection, noted these things.

Therefore, having expounded these matters in the work of Procurator Passerin, part 2, chapter 10, number 5, and Ferraris, in *Bibliotheca Canonica*, number 15, and others, in the chapters concerning law and obedience, from number 1 to the end, it is to be inserted that, concerning these matters, the Regulars, through the Apostolic Constitutions, do not prejudice the

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privileges granted to them by the Holy See, as was decreed by the Council of Trent, and that the Regulars are subject to the jurisdiction of the Bishop, even though they are exempt from certain things. However, the Supreme Pontiff does not, therefore, exempt them from everything that is prescribed by the synods. In Nebbio, on the 7th of February, the Regulars were troubled by censures from the ecclesiastical synod.

[*Latin ed. p. 186*]

186 APPENDIX vi. March 1, 1637. Book 14, Decree, page 571. In Usküb, it remained to be judged whether the Regular clergy were bound, or if not, for what reason, to observe certain regulations. Furthermore, Suarez, in Book 4, chapter 20, paragraph 10, states that a Pontiff, in order to avoid scandal and to maintain uniformity with other diocesan churches, and sometimes even with religious orders, who had already observed a certain decree, or to avoid causing offense to the members of other dioceses, could require the Regular clergy to observe certain regulations, even though they were exempt, and that the inhabitants of those places, who belonged to those churches, were not bound to observe them. Having explained these matters, concerning the questions: 1. "Whether the Regular clergy are bound to observe the statute concerning fasting, which is mentioned, if the ancient custom had prevailed in the community of the Regular clergy," and 2. "Whether they can be compelled by the Bishop, acting as a delegate of the Apostolic See, to observe a certain precept, so that the community itself may be obligated to observe it in the future, because in that case the obligation would not arise from the Bishop's jurisdiction, but from the custom itself, which has the power to create a law." The Congregation answered: "In the aforementioned response, it is clearly stated that, in the specific case, the Congregation has not explicitly ordered that the Bishop's mandate be observed, due to particular circumstances. Regarding the present question, it cannot be said that the synodal prescription, which is the subject of the question, expressly requires the Bishop's mandate to be observed. Nor is it to be considered that the prescription, which concerns the manner of transmitting Christian doctrine to the uneducated inhabitants of those places, whether by law or by the Council of Trent, or by Apostolic Constitutions, is contrary to the law of Trent; provided that the Regular clergy have opened themselves to the Bishop, so that they may be compelled to obey the commands he issues. The authors of the Church have repeatedly mentioned and explained that the most important thing to be taught during the celebration of the Mass is the mysteries of the faith, and that they have shown that this is what is most important to the hearts of the people, and that they have used words that are suitable for the instruction of such people. Therefore, since the observance of that statute is not required of the Regular clergy, it should be considered that it is not in force by order or by delegated

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jurisdiction of the Bishop.

[*Latin ed. p. 187*]

Moreover, each day, they shall explain, on festive days or otherwise, in the hearts of all, after having set aside useless matters, solemn questions, and, nevertheless, they shall strive to instruct them in the law of the Lord, so that, as the Fathers of Trent were concerned to have the Christian people instructed in matters of faith, so too, especially during the celebration of Mass everywhere, on those days when the people are most attentive, the Council of Trent, session 24, chapter 7, item 187, declares that the ancient and venerable Church of Rome, the mother and teacher of all churches, by a proven rite, lest the sheep of Christ hunger, lest the little ones lack bread, commands the pastors who have charge of souls; that the celebration of Mass, and the reading of the Scriptures, and other matters that concern the care of the Church, especially on Sundays, and on other days, and on festive days, shall be such that, in the parish church and in other churches, and in all places where the diocese is constituted, or within the city, after the first Gospel, the people may be instructed in Christian doctrine. The Archpriests also, and all others who are about to celebrate Mass, shall likewise explain something. Likewise, in session 5, chapter 2, concerning ecclesiastical matters, it is stated that a decree was issued in a certain Neriton case on December 3, 1757. Thus, if anyone should act otherwise, it is declared that he shall be suspended for three days; and the "folium" was ordered to be kept so that, if the people, for any reason, even accidentally, should perish, the church would be forbidden to them for their own good, until they were instructed in all that is necessary for salvation by word of mouth. If they neglect to do this, the watchful care of the Bishops shall not cease, lest it be fulfilled: "The little ones asked for bread, and there was none for them." Although this concerns the parish priests and parish churches, nevertheless, until a new one is obtained. From this decree, the Neriton clergy appealed to the Holy Congregation, and proposed the following doubts: I. "Whether the decree is valid in that part in which it imposes upon priests who have charge of souls the burden of teaching Christian doctrine under pain of suspension in this case?" II. "Whether the penalty of interdict imposed in the same decree against churches in which it should happen that the formula is lacking is valid?"

[*Latin ed. p. 188*]

APPENDIX VI. Regarding the instruction of Christian doctrine during the solemnities of the Masses. The Holy Congregation responded: After the homily, as previously stated, the priest should, with a loud voice, recite the affirmative responses, according to the established manner. To the Bishop: two affirmative responses. Even if it is not known what the responses are in the vernacular, the priest should respond in Latin, and after the Mass, the

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Parish Priest should inform the Bishop about this. Furthermore, it is certain that the Holy Congregation has approved, and even in oratories, chapels, and rural churches, where the sacred rites are customarily celebrated, the celebrant should, after the Gospel, impart the catechism. Moreover, we cannot, without a just reason, impose a penalty of suspension from divine offices on those who do not recite these things, but we can, at the discretion of the Bishops, impose the following, at least gradually, so that they may teach them by singing: The Sign of the Holy Cross; the Mysteries of the Most Holy Trinity and the Incarnation; the Apostles' Creed; the Lord's Prayer; the Angelic Salutation; the Decalogue; and the precepts of the Church. These are the things that must be taught, and the following decrees were issued at the Roman Synod celebrated by Benedict XIII in the year 1725, in which, in Title 1, chapter 5, under the heading: "Concerning the uneducated and adults," the following were decreed: "To these, we add others, and indeed, we lament that not all in cities and towns are able to live; nay, there are even many in the custody of beasts who, after receiving the salutary water of baptism, cannot, despite the urgent circumstances of the people, deny the Spiritual Fathers if it is commanded. For in the case we are discussing, the obligation compels the Bishop to teach the people; therefore, we decree that the people should not be ignorant of the principal elements of the faith, namely, the Mysteries of the Trinity and the Incarnation, and that they should learn these things, along with others, in the school [of the Church]. Therefore, let the Church of the Regulars, with its established order, consult with the Bishop, and we command that, in these matters, they diligently fulfill the episcopal mandate."

[*Latin ed. p. 189*]

xvi. Concerning another question, whether "in casu" (in certain circumstances) it is permissible. The Holy Congregation responded: affirmatively, provided that the superiors do not prevent them from explaining the Christian doctrine publicly in their exempt churches, which are not parochial, and that there are more Christians present than in the parish. In accordance with these resolutions, a response from the Holy Congregation concerning the causes of the Sacred Visitation, as previously explained, has been issued; it addresses the following doubt: "Whether priests can teach the Christian doctrine to the people in their churches." It is reported by Nicoli in the small volume "Regularis," number 7, that a resolution was issued in Todi by Canon Bertoni: or rather, that the decree of Emilius is to be followed in this case. This question pertains to the matter at hand. In this instance, the response is: affirmatively. Regarding the manner in which this should be done, it is the judgment of the Archbishop to determine whether a priest should teach the Christian doctrine to the Christian people in the rudiments of the faith, especially on Sundays, in the aforementioned church, for both boys and girls. Since the parish priest of the parish whose

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boundaries include the church had opposed the exposition of the principles of faith there, the following is stated in the Constitution of St. Pius V, which pertains to private churches: "Regarding the doubt: 'Whether the will of the aforementioned testator should be followed,' the response, given on March 30, 1675, is: 'The intention of the testator must be preserved.'" Furthermore, the Constitution in Florence, of March 29, 1726, addresses the doubt: "Whether the aforementioned (those sent on a mission) can administer the sacraments, and teach the Christian doctrine, with good morals." Beginning with the words: "Although..." Regarding the manner in which this is done, it depends entirely on the Bishop, and care must be taken so that the public ecclesiastical order does not suffer detriment.

[*Latin ed. p. 190*]

190 APPENDIX VII. CONCERNING THE PRACTICE OF THE APOSTOLIC PENITENTIARY REGARDING DISPENSATIONS IN MATTERS OF MARRIAGE. In the preceding Appendix V, we discussed frequent cases, namely, if the betrothed has had carnal intercourse with the mother, or with the daughter of a woman betrothed to him, or, conversely, if the woman betrothed has carnally known her husband's father, or his son, by lawful marriage: let us briefly consider the origin of these impediments arising from lawful marriage, or from acts of fornication. Pyrrhus Corradus, in his celebrated work entitled "Practice of Dispensations," book 7, chapter 3, number 23, states: "When a dispensation is requested concerning impediments arising from marriage, it is necessary that the impediment, whether singular or plural, arising from the consanguinity or affinity, be clearly expressed." In the same direct line, in the second degree, if the betrothed has had intercourse with the grandmother (in Italian, "Nonna") or with the aunt in the direct line of the woman betrothed, or, conversely, if the woman betrothed has carnally known her husband's grandfather, or his grandson, in the direct line. This necessity, as we indicated in the aforementioned appendix, is derived from the fact that, depending on the diversity of the origin, the difficulty of granting the dispensation varies, and the clauses by which the dispensation is usually granted are also different. This will become clear if we consider for a moment the persons or relationships from which affinity can arise, and the practice used in granting these dispensations. Affinity arising from unlawful intercourse is present, whether in the direct or collateral line. In the direct line, and indeed in the first degree, this affinity is present if the betrothed has had intercourse with the sister of the woman betrothed; or, conversely, if the woman betrothed has carnally known her husband's brother. In the same direct line, in the second degree, there will be affinity if the betrothed has

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had intercourse with the niece.

[*Latin ed. p. 191*]

191 i x VII. Concerning a woman betrothed: or, concerning the case where one has had relations with the sister of the woman betrothed, if the betrothed woman is the niece of the man betrothed. But the case is different when the carnal knowledge of the woman betrothed is clearly evident, arising from an affinity, but only a narration has passed. Indeed, for everyone, these diverse aspects of affinity in the first degree are apparent; and the case of a woman who has been defiled through an illicit union clearly appears, and how great is the wickedness in such a transgression. It is indeed shameful to have relations with a sister, and this does not pertain to the matter. Affinity in the first degree can arise even from a union with a woman who has been with the man, and then in marriage with the mother of the betrothed, or with the niece or sister of the betrothed, or with the son or brother of the betrothed, as long as the union has been with her mother, or daughter; likewise, it is also considered a great wickedness if a woman, who has been carnalized by someone, then marries that person's father or son, etc. And from this it is clear that, in order to grant a dispensation to avert the danger, it is necessary to add a clause that clearly and distinctly explains the impediment arising from it. This necessity of expressing the impediment arises from practice, or from the clauses by which such dispensations are usually granted. First, it is usually ordered that the same person, before the marriage of the betrothed woman with the betrothed man, should have relations with the mother of the betrothed woman, provided that the union with her has been removed by appropriate means. To this must be added that, to the party who has given cause for the illicit union, an absolution must be granted, and a penance assigned in these words: "Provided that, before all else, the party who has given cause for the illicit union shall be absolved, and a salutary penance assigned, so that the occasion for carnal sin may be removed." Indeed, all these difficulties vanish if they are clearly and distinctly indicated to the persons concerned, who are subject to the affinity.

[*Latin ed. p. 192*]

They entrusted the care [X VII. 492] to him in such a manner that, since the impediment arises from a carnal relationship, it can easily be removed, namely: "Titius desires to contract marriage; this, however, is the case with Bertha, whose mother, or sister, or niece, or maternal aunt, or paternal aunt, or cousin, or brother, or sister, or nephew, or uncle, or brother, or sister, is carnaliter cognita to Titius." Or, "Bertha desires to enter into marriage with Titius, from whose father, or son, or nephew, or grandson, or uncle, or brother, or sister, or nephew, or uncle, an impediment of affinity arises, and

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for which reason dispensations from the impediments of affinity, arising from the lawful union, can be obtained."

[*Latin ed. p. 193*]

93. A DEVOUT PRAYER IN THE PRESENT CALAMITIES OF THE CHURCH. O Jesus, most sweet, our divine Master! who always evaded the nefarious machinations of the Pharisees, with which they frequently sought to ensnare you; dissipate the plans of the wicked, and of all those who, with their deceitful arguments, strive to ensnare and outwit your Spouse. Enlighten all of us, your disciples, with the light of your grace, lest we perhaps be corrupted by the cunning of the wise men of this age, who spread their pernicious sophisms everywhere, so that they may drag us into their errors. Grant us such a light of faith, that we may recognize the snares of the wicked, firmly believe in the dogmas of your Church, and constantly reject the fallacious axioms (1). Our Lord Pius, to those who recite the customary prayer of the Church, has, through Divine Providence, benignly granted a plenary indulgence for one hundred days, on the 22nd day of October, 1866. AL. Card. BARNABÒ, Prefect of the Sacred Congregation for the Propagation of the Faith (1). It would be a most excellent thing if those who would spread this prayer (the value of which is evident) would commend it to the faithful, to be recited with the utmost sincerity and humility. Alda, vol. U, fasc. XVI; already we have said, Note I, page 321, that indulgences attached to prayers are valid, whatever language they are recited in, provided that the versions are faithful.

[*Latin ed. p. 194*]

194. ACTS OF THE COUNCIL. CONVENTUAL MASS. April 23, 1864, and May 6, 1865. Session 22. Decree concerning observance and amendment. Summary of the facts. In the cathedral church of N., according to an ancient custom confirmed by the capitular statutes, the Canons celebrated the conventual Mass on feast days, while the Chaplains celebrated it on the other days; however, this was generally intended for the benefit of benefactors, before the well-known Constitution of Benedict XIV, entitled *Cum semper oblatas*, which was issued on August 19, 1744. This Constitution, which abolished even contrary customs, led the Bishop of that time to diligently strive for the observance of the same Constitution. However, due to certain difficulties, its full implementation was not ordered until the year 1760, but on the following basis. On January 1, 1760, an agreement was reached between the Canons and the Chaplains, namely: 1° That the Chaplains, in their turn, should apply the conventual Mass for the benefactors, and record it in the Canon's weekly book; 2° That the Chaplain celebrating should not receive the alms which the Chapter began to provide weekly to the same Canon for the conventual Mass for the entire week, as if he himself had celebrated and applied the Mass, but that the Chaplain should

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exchange the application of the Mass in such a way that the conventual Mass was to be applied by the Chaplain for the benefactors in general, and by the Canon for the specific obligation undertaken by the Chaplain, without, however, any change in the alms. For each retained his own alms. Finally, the Canons, in recognition of the burden accepted by the Chaplains, returned to them the sum of one hundred scudi, the annual revenue of which was to be allocated to the Chaplains who sang the conventual Mass. To this agreement, a clause was added: "always subject to the approval of the Bishop and any superior to whom it pertains."

[*Latin ed. p. 195*]

THE CONVENTUAL MASS. 19!) This agreement had been observed for over a hundred years, until in the year 1868, the Chaplains, reviewing the cause of this custom, declared it illegitimate and protested against it; therefore, in order that the matter might be thoroughly resolved, the Bishop proposed two questions to the Sacred Congregation of the Council, namely, whether the aforementioned agreement could be maintained, and whether the custom arising from it was valid; and, if not, whether the Chapter was obligated to provide alms to the Chaplains, and what amount of alms, namely, whether it was the amount that the hebdomadary receives, or according to the synodal assessment. For the hebdomadary, who exchanged Mass intentions with the Chaplain, had received alms from the Chapter up to the year 1802 according to the synodal assessment, and then a somewhat larger amount. However, among other things, the Chaplains claimed that the agreement was invalid because it had not been approved by legitimate authority; and the Canons maintained that it had been approved, not only by the Bishop, but also by the Apostolic See, which had approved the acts of the Sacred Visitation at that time. Hence, an investigation was made in Rome, and in a single document found, which bore the date of December 7, 1759, and preceded the aforementioned agreement by about a month, the following was recorded by the Bishop of that time, in relation to the state of the diocese of N.: "After Benedict XIV, the Canons apply the conventual Mass on festivals and other customary days; in other cases, for a few years now, it has been private. Since I began to preside over this church, and this did not seem entirely satisfactory to me, I discussed this matter with the Canons, who were of the opinion that it should also be applied by the Chaplains on those days on which they celebrate a private Mass, so that they too might contribute, and have their own income separate from the Chapter's Mass; which the Chaplains do today, assigned to them by the Canons for this purpose, a centennial guard." Therefore, there is no mention in this document of the agreement which was confirmed a few days later, nor does it appear that it was ever subsequently presented to the Holy See for approval, as the Bishop himself believed. Therefore, the cause was first proposed to the S.C.C. on April 23, 1864, and, with testimonies

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presented on both sides, the following questions were debated: I. "Whether the agreement of January 1, 1760, can be maintained in this case..."

[*Latin ed. p. 196*]

196. CONVENTUAL MASS. "To the extent that it is negative, namely, whether, and which, and from which mass the alms are to be taken for the application of the conventual mass in the case of the chaplains." The Holy Congregation, however, issued a definition, stating: "It has been considered, and it is to be written to the Bishop, so that he may teach whether the Chapter and the body of chaplains form one body, and what are the revenues of each mass. Therefore, the Bishop was questioned, who replied that to him, two distinct bodies seemed to exist: the Chapter, and the Congregation of Chaplains, which he confirmed with suitable arguments. For, from ancient times, the chaplains have had their own constitutions, distinct goods, which they administer independently under their own name, and which are said to be immediately subject, not to the Chapter, but to the Ordinary. Regarding the revenues, the Bishop referred to the present state of the revenues of both the Chapter and the chaplains, which, although not large, nevertheless seemed to allow for a convenient deduction for alms for the conventual mass, whether celebrated by the canons or by the chaplains. A subtle dispute. FROM WHAT ARGUMENTS THE CHAPLAINS ARGUED IN FAVOR. — The chaplains maintained that the convention should be invalidated and shown to be unjust, for the following reasons: namely, they contended that it should be rejected 1, because of the lack of any legitimate approval; 2, because of the lack of power in those who made the agreement, who, if they could obligate themselves in this matter, could not bind their successors with the same obligation; 3, because of the nature of the convention, which seemed to include among the prohibited agreements, as decreed by the Council of Trent, Session 22, on observations and things to be avoided in the celebration of Mass; for it seemed to reek of "dishonest gain," and was included under the decree of Urban VIII, of June 21, 1625, which, among other things, § 5, thus commands: "And likewise, wishing to remove all detestable gain from the Church, it prohibits the priest who has accepted to celebrate Mass with a certain alms, from entrusting the same Mass to another, retaining a part of the same alms for himself." Furthermore, the following question was raised: "X. Whether priests, to whom sometimes a larger alms is offered for the celebration of Mass, are obliged to give the same alms in its entirety..."

[*Latin ed. p. 197*]

THE CONVENTUAL MASS. In some places, they assign to those who are entrusted with celebrating Masses; or, whether "it is sufficient to give the celebrant the customary alms." The Holy Congregation of the Council responded: that one ought absolutely to give the entire

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alms to the priest celebrating, and not retain any part of it for oneself. These things are recorded in the celebrated Decree of Urban VIII, later confirmed and further explained by Innocent XII, as can be seen in Lucius Ferraris, Bibliotheca Canonica, under the word "Missa sacrificium," article 2. Indeed, in the present matter, the Canons derived more temporal advantages from this exchange of applications. For the weekly Canon was never without the full alms of the Masses for the entire week, which was somewhat greater than the alms established according to the synodal regulations; on the other hand, the chaplain celebrating, unless he exchanged intentions, remained without alms, just as he would be deprived of alms if he did not have the exchange of applications. Therefore, since the burden of applying the Mass for the benefit of the benefactors generally fell upon the Chapter, it was not equitable that it should be imposed upon the chaplains in this way. This, indeed, was contrary to the tenor of the Constitution: For it was always stipulated, and by the Resolutions of the Holy Council, that the Canons were to provide alms to the chaplains for the application of said Mass, as in Ferraris, March 1, 1719, and in Osimo, December 16, 1820. Finally, other inconveniences were enumerated, concerning the place, days, and hours of celebrating, to which the Canons were not bound by convention. Therefore, the chaplains considered not only the convention to be invalid, but also the custom derived from it. Moreover, with the convention and the custom arising from it being invalid, the obligation of the Chapter to provide alms to the chaplains for the conventual Mass seemed to be diminishing; especially since the Chapter itself, by its actions, had often demonstrated that it was obligated to provide that very alms, either by the said convention, or by the donation of the centum, whose annual fruits it paid, or by other acts that had occurred over time. Therefore, in the present case, it seemed that the Resolution given in Ferraria, on March 4, 1719, applied, in which, when the Bishop, during the sacred Visitation, ordered the conventual Mass to be applied for the benefit of the benefactors, and the Chapter was to provide...

[*Latin ed. p. 198*]

198. CONVENTUAL MASS. It had been decreed that the alms should be applied to the Conventual Mass, which the Chaplains customarily celebrated; upon the appeal of the Chapter, and after various doubts were proposed to the Sacred Congregation, namely: I. "Whether the Dignitaries, Canons, Mansionaries, and Chaplains of the Chapter, who, by custom, are accustomed to celebrate Conventual Masses in the cathedral church, are bound to apply them to the benefit of benefactors; and, secondly: Whether, when celebrated and applied by them, the alms should be paid by the Chapter." The response was: To both, affirmatively.

THE ARGUMENTS PRESENTED BY THE CANONS AGAINST THE

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FIRST DOUBT. – The Canons, through their Advocate, defended the aforementioned agreement, arguing that if it were to be rescinded, the entire burden of the Conventual Mass would have to be borne by the Chaplains. Regarding the agreement itself, the Defender maintained that it did not lack sufficient approval, citing an observance lasting more than a century, which even suggests the favor of the Apostolic See. However, since the Chaplains were seeking to abolish the agreement not only due to a lack of external solemnity, but also because they considered it intrinsically flawed, the Defender endeavored, with the authority of theologians, to demonstrate that it was entirely lawful to maintain it. Indeed, the most rigorous Antoine wrote in his treatise *De virt.*, art. *id.*, on simony, question 6: "Whether the exchange of spiritual things among themselves is considered simony, and therefore illicit? Answer: Negatively, if it does not have attached to it any temporal advantage, and if no price intervenes, because it is not prohibited by any law. Not by divine law... since both are of the same order. Nor by ecclesiastical law; for although all agreements in spiritual matters are prohibited, this is understood to refer to those to which some temporal advantage is attached, or which are made with the intervention of a temporal price. Hence, it is lawful for two persons to exchange prayers, to exchange sacrifices, to exchange services; for example, 'I obligate myself to celebrate Mass for you tomorrow, so that you will celebrate it for me on another day.'" But in this case, with the consent of the Bishop, the matter was said to be a simple exchange of sacrifices, and therefore the agreement was not subject to the censure of the Decree of Urban VIII, nor of the Constitution of Benedict XIV, which begins: *Quanta cura*. (I) The cause of the Canons was defended by Salvator Pallottini, Advocate.

[*Latin ed. p. 199*]

THE CONVENTUAL MASS. 199 Indeed (the Defender continued), the most eminent theologian, St. Alphonsus, in Chapter 6, paragraph 73 and following, of *De Missis, et Stipendiis*, published by Andreas Calant, volume 2, treating extensively on such matters, asks: "Is it permissible to make agreements concerning the alms for Masses?" And among other things, he states: "It is not forbidden for a priest receiving a stipend for a Mass to be celebrated the following day to ask another priest to celebrate it for him on that day, obligating himself in turn to do the same for another day, even if the stipend for each Mass is unequal. This is merely exchanging the application, or intention, of the Masses, which is a practice established even among pious and conscientious men (1)." In the present case, the Defender maintained that there was no appearance of simony, whether because he claimed the alms for the Masses were equal, or because the donation of one hundred *scuta* had been made by the Canons to the Bishop, to be distributed to the Chaplains celebrating, and especially with at least tacit consent of the Bishop. For in the exchange of spiritual things, the consent

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of the Bishop is sufficient for the exchange to be legitimate, as happens in the exchange of benefices.

THOSE MATTERS WHICH WERE BEING DISPUTED IN FAVOR OF THE SECOND DOUBT. — Even supposing that the aforementioned agreement was not to be mentioned, the Defender endeavored to show, with greater insistence, that the alms or distribution for the conventual Mass, on those days when the Chaplains customarily celebrated it according to established capitular regulations, must be taken from the Chaplains' own funds. Before demonstrating this, he raised a relevant question, arguing that a single capitular body is formed, consisting of both Canons and Chaplains. For if those Chaplains were not part of the Chapter, they were nevertheless of the Chapter, that is, they belonged to the clergy of the Chapter, and thus, as the Chaplains formed only one body inseparably with the Chapter, they were subject to the capitular constitutions. If they were to administer their revenues independently of the Chapter, the Defender argued, then the Chaplains ought to take the alms for the conventual Mass from their own funds. For from the very beginnings of the Church, all clergy were enrolled in the canonry or list of each church, and offered prayers for the benefactors.

(1) St. Alphonsus, *Homo Apostolicus*, paragraph 9, wrote that this opinion of the theologians is no longer to be maintained.

[*Latin ed. p. 200*]

200. OF CONVENTUAL MASS. They strove to attend, and especially to offer sacrifices in honor of their respective patrons. This praiseworthy custom has been widely sanctioned by the sacred Canons. Those who were obligated to celebrate and chant the Mass were also required to apply it. For the celebration must not be separated from the application, unless otherwise expressly stipulated, as declared by the Sacred Congregation of the Council in *Zinnen*, *Applicationis Sacrificii*, August 18, 1668, *Lib. 26*, *Decret.*, and in Lucana, August 26, 1683, *Lib. 33*, *Decret.* Therefore, Benedict XIV, in his Constitution *Cum semper*, did not impose a new obligation, but rather restored to force the ancient obligation which had fallen into disuse in many churches. For, prior to the aforementioned Constitution, the Sacred Congregation of the Council had decreed, in each case, that both Canons and Beneficiaries, or Chaplains, who were bound by their respective duties to celebrate the conventual Mass, were also obligated to apply it, as is expressly stated in Tusculana, November 16, 1652, *Lib. Id*, page 210. And this is taught in *Nullius Trium fontium*, *Missa Conventualis*, March 13, 1772, §, where it is written: "Neither is the mere celebration sufficient, but the application is also required" for the benefit of benefactors in general, and no contrary custom is valid. This was the constant opinion of the Sacred Congregation in Camerinen, June 9, 1714; in Comen, May 11, 1720; and in Veliterna, March 14, 1722. Hence, Benedict XIV, in the afore-

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mentioned Constitution, § 12, decreed: "This obligation does not pertain to individual benefactors, but to benefactors in general of any church to whose service they are bound, namely, all those who hold in that church either dignities, or canonries, or prebends, or choral benefices, and who celebrate the conventual Mass according to their respective duties." Therefore, if Chaplains were obligated to celebrate and chant the Mass according to their respective duties, they were also obligated to apply it. Indeed, even if Canons wished to apply the Mass for the benefit of benefactors in general, they would not fully fulfill this obligation unless they chanted the conventual Mass; for the Sacred Congregation declared in Aretina, March 11, 1604: "They are to be compelled to chant two conventual Masses on those days on which they are required by the rubrics of the missal, provided that neither both nor either of them suffices for the celebration of a private Mass with mental application."

[*Latin ed. p. 201*]

THE CONTENT OF THE MASS. 201. From all these things, the Defender necessarily concluded that alms, or the distribution, for the celebration of the conventual Mass must be taken from the proper revenues of the Chaplains, namely, from the distribution mass. For in those collegiate churches where there is a common distribution mass, both for the Canons and for the Chaplains, sums are taken from that very distribution mass for each hour in which they attend the divine offices; but in churches where the Canons and Chaplains have a respective and distinct distribution mass, each must take from his own mass; and therefore, from the same, they must take for the conventual Mass, which is the principal part of the divine office, as is shown in the Reatine cause, of the conventual Mass of January 20, 1850, §. Nemo. Therefore, Benedict XIV, in his often-praised Constitution, §. 18, taught: "And there was also this exception, that the conventual Mass is not always celebrated by the Canons, or Dignitaries, but sometimes also by Beneficiaries and Mansionaries, whom it seems less fitting to deprive of all alms for the celebration of the Mass, and it is not known from where this alms can be taken. To this matter, it was also considered advisable to request that it be taken from the distribution mass." "For since the conventual Mass is the principal part of the divine offices, the alms, or distribution, for the same must be taken only from the distribution mass; but since this distribution mass is not common in all churches, the Holy Father generally decreed that it should be taken from the distribution mass." And to this matter was added the Resolution in the Lucanian cause, of the conventual Mass of March 14, 1750. In that cause, the following questions were proposed to the Sacred Congregation: I. "Are the Beneficiated Chaplains, or Mansionaries of the Lucanian cathedral, obliged to apply, for the benefit of the benefactors in general, the conventual Masses which they celebrate, in turn, in the case?" And the answer was affirmative. II.

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"Are these Beneficiated or Mansionaries also obliged to do so for those who are not benefactors?" And the answer was affirmative. III. "Is it due to these Beneficiaries or Mansionaries, beyond the distributions assigned to them, for all those of the choir who attend these conventual Masses, an alms for the application of these conventual Masses?" And the answer was affirmative. IV. "Is this alms to be deducted from the common mass, or from their own mass, of the Beneficiaries or Mansionaries?"

[*Latin ed. p. 202*]

202. OF CONVENTUAL MASSES. i) Regarding the distinct status of Canons in this case. "To which the Holy Congregation responded: To I, affirmatively and furthermore. To II, to the Reverend Secretary, most reverently. To III, affirmatively and furthermore. To IV, affirmatively regarding the first part, negatively regarding the second part. Having thus explained the doctrine, the Defender proceeded to refute the difficulties that seemed to arise from certain resolutions of the Holy Congregation, namely, from the decree of Ferrara, dated March 18, 1719; he maintained that this case confirmed the doctrine previously explained. For, although in the alleged counter-argument from the decree of Ferrara, the Holy Congregation responded to the second question: that the alms should be paid by the Chapter, yet regarding the third question, expressed in these words: "Whether all those who constitute the body of the Chapter, whether they be priests, deacons, or subdeacons, and whether they participate or do not participate in the Mass and distribution, are bound to contribute to the alms for the aforementioned conventual Masses," it responded: To III, affirmatively, but from the Mass distribution. It also responded to the seventh question, expressed in these words: "Whether the alms should be taken from the Mass distribution, or from the fruits of the benefices of the individual Canons," with: To VII, that it should be taken from the Mass distribution. This was because it concerned the Mass distribution, which was common; therefore, the distribution for the conventual Mass should be determined from it. It was also stated that the resolution issued in Osimo regarding conventual Masses, dated December 16, 1820, did not present an obstacle. In that case, it concerned beneficed persons who do not hold choral benefices in the same church, as stated on page [of the same cause], §. From this, it is not surprising that these same beneficed persons would not be bound to celebrate or to apply the conventual Mass. Finally, as a further argument, the Defender cited the case of January 7, 1839, which he claimed was similar to our case. It concerned chaplains who had separate incomes, arguing that they were not bound to apply to the Mass, because the government had established the chaplaincies without this obligation. Regarding the question: "Whether the Mass, both to be celebrated and applied, is to be done by whom in this case?" the Holy Congregation responded: affirmatively in all cases by the chaplains from the Mass, except on days when the Mass is

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celebrated and applied by the Canons. With an appeal interposed, and a new hearing held, regarding the question: "Whether one should adhere to, or re-

[*Latin ed. p. 203*]

CONVENTUAL MASS. 203: It is necessary to yield to the decisions in the case: "The Sacred Congregation, on December 17, 1842, judged it fitting to respond: With a prior absolution and remission granted concerning past omissions, a single Mass, celebrated with singing and with the entire Chapter and clergy present, should be offered, along with the verbal declaration to the Most Holy [Father], in accordance with the decisions; and the Archbishop should ensure that a suitable mass distribution is provided for the priests from the annual sum of four hundred money units, previously allocated by the Chapter, and from other goods and revenues of the aforementioned group of priests, from which an alms should be taken for the conventual Masses. These and other matters, extensively debated, are to resolve the following doubts: I. "Can the agreement of March 1, 1760, be maintained in this case?" and II. "Can, what, and from what mass should the alms be given to the chaplains for the application of the conventual Mass in this case?" RESOLUTION. – The Sacred Congregation of the Council, after discussion on May 6, 1865, judged it fitting to respond: To I. Negatively. To II. Affirmatively, from the synodal tax from the mass of the congregation of chaplains. From this, we gather: I. That the agreement, even if initiated with the consent of the Bishop, cannot be maintained to permanently direct the application of sacrifices, unless a corresponding exchange of alms is made. II. Nor can the same agreement be maintained, even if something intervenes that appears to be equivalent to an equal exchange of alms. For both agreements, which would be intended to be observed perpetually as if by law, at least in appearance, would bear the character either of seeking gain or of a temporary advantage of considerable value. III. Indeed, neither can a perfect exchange of applications and alms be maintained, which would impose a perpetual obligation, if the real and fixed burdens of celebrations are exchanged with the personal and contingent burdens of celebrations.

[*Latin ed. p. 204*]

204. THE CONVENTUAL MASS. IV. This change, if not disapproved for some other reason, would at least be either contrary to the order which is sought through obligation, or it would impose the order upon someone easily subject to abuse. V. Therefore, a custom of this kind, even if ancient, cannot be considered reasonable; and thus, it would lack firmness. VI. Furthermore, it can be seen that the conventual Mass holds a prominent place among choral duties. VII. Those who are devoted to the choral office for the sake of its benefits should, in their turn, participate in its celebration and

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performance, according to particular customs and specific regulations. VIII. The celebration of the conventual Mass cannot be separated from its application for the benefit of others in general, which application, according to ancient ecclesiastical custom, should be the first consideration. IX. Therefore, just as the celebration itself is a real obligation inherent in the choral office, so too is the application; consequently, neither the Canon celebrating nor the Beneficiate can absolutely demand a payment as an alms for such celebrations. X. It is fitting, by the prompting of equity, that those who sing the conventual Mass should receive a specific payment, which, although commonly called an alms for the Mass, is rather a part of the distribution assigned to the choral offices (1). (I) In the case of Burgos, concerning the conventual Mass of May 16, 1716, the Bishop, in the collegiate church already established since 1601, during the occasion of the sacred Visitation, decreed that the conventual Mass should be applied for the benefit of others by the Dignitaries, Canons, and Vicar, who constituted that collegiate church, and that one *julio* (a former Spanish coin) should be paid from the Treasury of the Chapter, from the revenues of the capitular endowment, after ordinary expenses were deducted, for this distribution. However, the Canons argued that no alms should be due for the conventual Mass, since it is an obligation attached to the Prebends; and the following question was raised among others: "Is an alms of one *julio* due from the Dignitaries, Canons, and Perpetual Vicar for each conventual Mass, beyond the emoluments of the Prebends and the Vicariate respectively?" To this question, the Holy Congregation responded affirmatively, as a form of distribution. This is consistent with paragraph 18 of the aforementioned Constitution: "Since, in order to avoid any detriment that might arise (taking into account the value of the Prebends), the Beneficiates and Mansionaries would receive nothing special from the application of the conventual Mass, in order that these, in no way, should lack alms in these days, it is determined that it should be taken from the mass of distributions."

[*Latin ed. p. 205*]

CONVENTUAL MASS. 205 XI. Furthermore, it follows that distinct colleges which belong to a single choral body ought regularly to deduct from their separate revenues the aforementioned contribution, or from common funds, if they are not distinct, observing the proportion of revenues according to custom, or according to a special law established (1).

MASSES FOR THE PEOPLE REGARDING DISPENSATIONS OR REDUCTIONS. February 18, 1865. Summary. The Bishop N. presented to the Most Holy Lord the following: that there are very large parishes in his diocese in which Protestants live mixed with Catholics; that there are not sufficient priests to be appointed to the parishes or to the filial churches of the parishes; on the contrary, there are many obligations for Masses, whether fixed or occasional; and he continued his discourse as follows: "In

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these very populous parishes, there are many Masses founded; moreover, for each deceased adult, three Masses are usually celebrated after the day of death. For the poor deceased, by all the parishes, through diocesan observance, which is very difficult to relax, at least one Mass must be celebrated free of charge. Other parishioners, who are unable to found Masses for their parents and other relatives, desire to have Masses celebrated on the anniversary of the death; likewise, Masses are desired for deceased children, as in Angelorum, as well as for all the faithful deceased, and in other spiritual and corporal necessities, and indeed in their own parish church, so that they may be present at the sacrifice of the Mass; and the parishioners would certainly be greatly saddened if the pastors were unable to satisfy this pious desire. To these are added Masses for betrothed couples. In almost all parishes, there exist pious Sodalities."

(1) The norm followed can be ascertained from the Decree of the Sacred Congregation of Councils concerning new Cadets, January 28, 1865, which relates to the erection of benefices in the matter under consideration, pages 21 and following.

[*Latin ed. p. 206*]

206 "MISSAE PRO POP. QUOAD DISP. VEL REDUCI". With numerous foundations for Masses, and other pious congregations, whose members request that sacred rites be performed, both for the living and the dead, through collected alms, and other sacred rites which, if a Parish Priest were to have them celebrated through another Priest in a different church, would very easily incur the suspicion of neglect or indifference. Furthermore, within the diocese, there exists a particular society of Priests, under the name of the Marian Pact, to which all diocesan Priests, along with numerous laymen, are attached, and who are obligated to celebrate a Mass, or to arrange for the celebration of a Mass, for each member of the deceased. To all of this is added the fact that, due to a shortage of Priests, many Parish Priests, even those of neighboring parishes that are vacant (and often for several years), must commend themselves; thus, it happens that, with the accumulated burden of Masses, they are quite unable to fulfill their obligations. And if a Parish Priest, frequently lacking the assistance of a curate, is ill for a longer period, the Masses that have been established, as I have mentioned before, are greatly delayed, which has already happened in other, more populous parishes, which have only one Priest, and which the faithful certainly endure with great distress.

Due to this large number of Masses to be celebrated, and the lack of Priests, the Bishop recounted that at least twenty Parish Priests were unable to fulfill the obligation in any way, and that several others were able to fulfill it only partially, regarding the application of Masses for the people on feast days, which are said to be reduced or suppressed. Therefore, he requested the remission of this obligation, which obligation, it was said,

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was introduced by the Encyclical Letters of the Most Holy Father, dated May 3, 1858, which begins: "Amantissimi Redemptoris."

THOSE THINGS WHICH WERE PRESENTED FROM OFFICE. The Fathers of Trent, in Session 22, chapter 1, concerning Reform, openly taught that Parish Priests, and all others who actively exercise the care of souls, are bound by divine precept to offer the Sacrifice of the new law for the sheep entrusted to them, so that the application of Masses for the people deserves to be counted among the pastoral duties that are incumbent upon the Parish Priest by reason of his office, as Innocent XII stated in his Constitution, dated April 24, 1699; and this must take place both on all Sundays, and on other more solemn feasts, according to the well-known Constitution of Benedict XIV.

Even if the revenues of the parish are meager, the Sacred Congregation stated in its Decrees, in Florentia, on March 26, 1735, and in Vivaequen, on May 7, 1808.

All of these things remain in force not only for those feast days.

[*Latin ed. p. 207*]

MASSES FOR THE PEOPLE, REGARDING DISPENSATIONS OR REDUCTIONS: 207 who are still maintained by the people, but also for feast days which have already been suppressed. Indeed, the Supreme Pontiffs, who have freed the Christian people from the burden of attending Mass on those days, have not excused the pastors from the obligation of offering Mass for the people, as is evident from several declarations of this Sacred Congregation, from the Constitution of Benedict XIV, number 7, and from the aforementioned Encyclical Letters of May 3, 1858, beginning with the words: *Amantissimi Redemptoris*, in which no new burden is imposed, but rather, the old obligation is once again emphasized and declared to be absolutely observed, against which no custom, however ancient or even venerable, could be validly adduced, as stated in the aforementioned Constitution of Benedict, number 5. It is, however, to be understood that, given the great scarcity of parochial revenues in particular cases, a remission of the aforementioned obligation may be granted to the pastors. However, it did not seem to be a case of absolute scarcity of revenues, but rather of a scarcity of priests, so that one pastor was not sufficient to fulfill the obligations of Masses, whether those arising from perpetual endowments, or those arising from the daily offerings of the faithful. Whether this constituted a legitimate reason for relaxing the obligation was to be judged by the Eminent Fathers, who gave the following response.

RESPONSE. — The Eminent Fathers, after the matter was presented to them in a summary of the prayers in the general assembly of February 18, 1865, considered it appropriate to respond negatively, and in accordance with (1).

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COLLECTIONS.

I. On feast days which are said to be suppressed, certain obligations may be relaxed, if necessity dictates, for the favor of the Christian people; therefore, all ecclesiastical offices which are connected with the relaxed obligations and which can exist independently, remain intact.

(I) The intention of the Sacred Congregation was that the Bishop should also be given the faculty to have Masses celebrated for those who contribute from perpetual foundations, according to the established form, in addition to the diocese.

[*Latin ed. p. 208*]

208. MISSES FOR THE PEOPLE, REGARDING DISPENSATIONS OR REDUCTIONS.

I. The application of the Mass for the people is considered among the ecclesiastical and pastoral duties which can be performed independently of the presence of the people, and therefore, this obligation cannot be entirely waived on festive days which are commonly suppressed, in parishes and other places.

II. It is not to be considered a new obligation, as is stated in the celebrated encyclical *Amantissimi*, but rather a declaration of an existing obligation (1).

III. Furthermore, it cannot be considered a legitimate reason for relaxing said obligation, the large number of Masses that cannot be fulfilled due to a lack of priests.

IV. For the grave obligation of offering a Mass for the people, which descends from divine law, urges pastors by reason of the pastoral office entrusted to them by the Church, and is not easily relaxed (2); especially when there are other means available for fulfilling other obligations.

V. In the aforementioned cases, it has been deemed appropriate to consider an extraordinary measure, namely, the faculty granted by the Apostolic See to celebrate Masses derived from perpetual endowments, even outside the diocese (3).

(1) See the related question in *Causa Servitii Chori*, March 21, 1863, Vote I, p. 599 et seq., col. with note Z, p. 12 of the same Vote.

(2) See the celebrated question resolved in the Sacred Congregation for the Propagation of the Faith, which is referred to in Velum I, p. 389 et seq.

(3) I have called it an extraordinary measure. For in the Decree: "Since it has often been confirmed by Urban VIII and Innocent XII, §. 9, the following statutes are in place: Manual and daily alms for the celebration of Masses may only be accepted if those who offer them have fulfilled the obligations previously imposed, so that they may also be able to undertake new

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obligations; otherwise, they must entirely abstain from such alms, even those offered spontaneously in the future, and remove any collection boxes from the church with the inscription 'Alms for Masses,' or similar, under the same penalties incurred by the very act, so that the faithful are not defrauded in this way. Regarding a doubt, which is referred to in the same general Decree, §. Eleventh: 'Is this decree absolutely prohibitive, so that those who have not fulfilled their obligations may not accept new alms, and what if they can fulfill all obligations within a reasonable time?' To which the response was: it does not absolutely prohibit; and therefore, even if they have not fulfilled the obligations already undertaken, they can still undertake new obligations for the celebration of Masses, provided that they can fulfill all obligations within a reasonable time. However, when those words extended too far into a reasonable time, the Sacred Congregation of the Council determined the time in this way on July 17, 1605: 'In the declaration of the eleventh impression above the Decree..."

[*Latin ed. p. 209*]

209 JURISDICTION, June 10, 1865, and July 8, 1866, Session 25, chapter 1, section c, concerning the Compendium of Facts. In the parish church of N. in Italy, the Archpriestal benefice, with the pastoral care attached to it, became vacant. In the meantime, the Bishop was absent, and afterwards, he passed away. Joseph, a Regular priest who had been laicized, served as administrator of the souls, having, of course, deserted the regular Order with the permission of the Holy See, and had been appointed among the clergy of the same parish church of N., with the faculty of obtaining only one ecclesiastical benefice, even with pastoral care. However, after Joseph had administered the vacant parish for two years, the Vicar, at the urging of the Municipality, posted edicts, inviting those who aspired to obtain the vacant Archpriestal benefice to present themselves before the Examiners, so that he who is found to be more suitable may obtain the Archpriestal benefice. To those, it is permitted to accept the celebration of other Masses, provided that within a short time, it is possible to satisfy everyone; today, some Superiors of religious orders, as they say, again inquire: whether the aforementioned short time for celebrating Masses is to be considered a time of two or three months. The Sacred Congregation, etc., responded: the short time is to be understood as one month (Lib. 19 Decret., page 409). However, this Decree does not seem to have been appropriate in the circumstances expressed by the Bishop. For, it concerned an excessive number of Masses that could not be satisfied due to a lack of priests; and, moreover, the priests, by reason of the duties that were incumbent upon them, could not, much to the admiration and sorrow of Catholics, decline the offered manual alms; nor was there a sufficient number of priests available to Catholics, to whom they could entrust the celebration of Masses for their own benefit or for the benefit of the deceased, etc. Therefore, in order that

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the faithful might not be disappointed, the only remaining means was to obtain from the Apostolic See the faculty to celebrate Masses everywhere, arising from fixed obligations. This faculty must be requested from the Supreme Pontiff, who alone can derogate from the particular laws imposed by the Founders, who left the celebration of Masses in certain churches or altars; indeed, even if special laws have not been explicitly added in such foundations, nevertheless, everyone desires that Masses be celebrated in that particular church, to which, led by the incentives of religion and piety, alms are offered, or in which, perhaps, someone is buried, rather than in another church that is completely unknown to them; as Benedict XIV stated in the Constitution Quanta cura, dated June 30, 1741.

[*Latin ed. p. 210*]

210. OF PATRONAGE. But Joseph, who was merely the present "economus" [administrator], was said to have been given the name as a trial, and after the trial, he was found to be suitable. However, since the canonical term for appointing a parish priest had passed, the capitular vicar petitioned the Apostolic See in writing, requesting permission to admit the aforementioned Joseph to the vacant prebend. Meanwhile, the clergy of the same church protested, primarily for two reasons: first, because they claimed the right to present a candidate for the archpriestly prebend; and second, because they asserted that Joseph, being a regular [cleric], could not possibly obtain it. Several things occurred in the meantime, which are neither relevant to the present question nor worthy of mention. Thus, two questions arose for discussion: one concerning the patronage, and the other concerning the canonical election of Joseph. A summary of the arguments. THOSE ADVANCED IN FAVOR OF THE CLERGY OF CHURCH N. The clergy presented a document from the year 1585, which contained the following relevant passages: "We beseech the Most Reverend and Venerable Bishop to deign to grant that no foreign vicar be appointed by the archpriest, lest disputes and disagreements arise within the Chapter due to the difference in these dignities, and that the aforementioned archpriest be chosen from among the canons, according to the ancient custom of the same Chapter, and confirmed by the Venerable Bishop, so that, except in the case of a grave offense or a legitimate cause, he may not be removed after being appointed; nor may any other dignity be established in the same church and clergy, except for the aforementioned archpriest, in the manner described above." Following these passages, the rescript of the Bishop of that time was read, which stated: "Having considered and read these points, avoiding hatred and disputes, and lest the entire flock be without a shepherd for a long time, we, with a benevolent spirit, subscribe, ratify, and grant anew, and seal with our customary seal." From this document, the defender of the clergy argued that the possession of this patronage right had lasted for more than a century, so that even if the legitimate title of the

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same were unknown, it should nevertheless be presumed; especially since the document presented showed that the...

[*Latin ed. p. 211*]

JURISDICTION. 211. The advocate himself stated that the right of patronage had not been originally granted, but had existed for some time, and that this document merely confirmed it, as the following words indicate: "according to the ancient custom of the Chapter." These words suggest an observance whose origin lies in antiquity. Moreover, no one is ignorant of the fact that such an observance, not only excuses from the original title by presenting it, but also creates a presumption in favor of any title whatsoever, as jurists commonly say. Furthermore, if the title of patronage itself were being investigated in this case, it was argued that it could justly be considered to have been established in the document dated 1585: for it seemed to indicate a transaction between the clergy and the bishop, fleeing the lilies of hatred. Indeed, it is understood that a transaction constitutes an exception to a settled dispute, and has the same force as a judgment; therefore, it also binds the successors, because it provides a corresponding and burdensome title. But, in addition to the violation of the right of patronage, the advocate for the clergy maintained that the proceedings themselves were invalid. He asserted that the form prescribed by the Council of Trent and the Constitution of St. Pius V for granting such rights had not been observed, for he claimed that no formal meeting had been held, nor had any assembly taken place, but that Joseph had been elected through a private examination.

THINGS WHICH WERE ADVERSE TO THE CLERGY. – In contrast to the arguments presented by the advocate for the clergy, several points were raised that were detrimental to their case. For, since the matter concerned the right of patronage, which imposes a certain servitude, the burden lay upon the clergy, as plaintiffs, to conclusively demonstrate that this right existed. In law, every benefice is presumed to be freely granted, as the authorities commonly teach. Indeed, the patronage rights claimed by the clergy did not appear to be substantiated by the document presented. For, aside from the question of its authenticity, which was raised by the Vicar Capitular, it was also the case that the document itself could not be considered either as the original title for the acquisition of this right of patronage, nor as evidence of ancient possession. For, although the right of patronage can be acquired by a privilege from the Supreme Pontiff, who, by the fullness of his power, disposes of all benefices, Cap. 2, paragraph 6, it cannot be acquired by a privilege granted by a bishop.

[*Latin ed. p. 212*]

212 OF THE PATRONAGE. cesso, Cap. This matter, concerning ecclesiastical affairs, is not foreign. Garcias de Beneficiis, p. 5, ch. 9, n. 1, 2, 8, and

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others, generally. Therefore, even if the patronage had been granted by the Bishop at that time, since the Bishop is now deprived of this power, the grant would be of no consequence, nor would the obligations arising from it. Moreover, if that document were presented as evidence of a disputed right, it could not help the clergy, unless it were shown that the same possession had continued to the present time. Just as other servitudes are lost through non-use for a very long time, which is sufficient in this matter to prescribe the right, so too the right of patronage, although legitimately acquired previously, is lost through non-use for a very long or lengthy period. The authors state that if, within a long period of time, a rector has been appointed to the church twice without presentation by the patrons, the right of presentation may be lost, unless the patrons demonstrate that they were legitimately hindered. Furthermore, in the present case, although the clergy asserted for many centuries a continuous possession of this right, no legitimate proof of such possession was adduced. On the contrary, certain documents of the present and past centuries, concerning the collation of the archpriestly benefice through a joint agreement, were presented, which made no mention either of the right of patronage or of a presentation made by the Chapter. Therefore, neither in the petition nor in the claim of possession, was the existence of the patronage demonstrated as it should have been.

THINGS OPPOSED TO THE ELECTION EFFECTED BY THE VICAR-GENERAL OF THE CHAPTER. Moreover, further observations were made concerning matters that were contrary to the election that had been carried out. Although the Chapter is considered to succeed to the entire jurisdiction of the Bishop when the episcopal see is vacant, nevertheless, according to the sacred canons, this is understood to be of the jurisdiction that is considered necessary for the governance of the diocese, and not of the voluntary jurisdiction. Therefore, the Chapter, or the Vicar-General of the Chapter to whom the exercise of jurisdiction is transferred, is entirely prohibited from conferring those benefices, the collation of which pertains solely to the Bishop, Cap. 2, De sed. vac. Indeed, according to the Decretals, such vacant benefices were formerly to be conferred by the future Bishop, but afterwards, the collation of them was reserved to the Apostolic See, according to Rule II of the Chancery, and the Constitution of St. Pius V, which begins "Sanctissimus diei 9 Mart."

[*Latin ed. p. 213*]

"IURISPATRONATUS" 213, title 1568 (1). Therefore, all benefices which pertain to the free collation by the Bishop, when the episcopal see is vacant, can only be conferred by the Roman Pontiff, as is taught unanimously by Girald, *Expositio Juris Pontificii*, vol. 1, page 277, section 428; Pieffenst., *Liber Decretalium*, book 3, chapter 2, number 30; Pirrhing, *Liber Decretalium*, book 3, title 9, section 2, number 9; Rigantius, *Ad Responda

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H. Cariceli*, section 3, numbers 48, 143, and 145, and others. However, it was noted that there had been doubt as to whether the aforementioned prescriptions of law also applied to those benefices which became vacant while the see was still full, and the vacancy was left by the preceding Bishop, as had happened in the present case. Indeed, several authors followed the negative opinion, and Rigantius, in the aforementioned passage, affirmed that this view was more agreeable to him, because the reservation should be limited to the case expressly stated in the law, namely, to benefices which lack their proper Rector, when the episcopal see is vacant. However, Garcias, in *De Beneficiis*, paragraph 5, chapter 1, numbers 634 and following, and Tondut, *Resolutiones De Beneficiis*, part 2, chapter 3, chapter 5, number 28 and following, maintain the contrary opinion, and Rigantius, in the aforementioned passage, notes that this opinion is commonly accepted and observed in practice. Therefore, in the present case, if it was determined that the archpriestly benefice pertained to the collation by the Bishop, according to the opinion commonly held in practice, the Vicarius capitulari seemed to lack the power to confer it. But besides such a reservation, there were other defects by which the right to confer the aforementioned benefice also ceased. For, according to Chapter 3, 4, and 5 concerning the supplement for negligence of prelates, the person to whom the collation pertains in the first place loses the right to confer the benefice through negligence. Indeed, after the lapse of six months, when dealing with parochial churches, the collation is especially reserved to the Apostolic See, according to the Constitution of St. Pius V, of April 15, 1567 (2). Furthermore, since it is certain in law that acts of collation in parishes are invalid if they are not performed before Synodal Examiners, that is, either in the synod itself or by virtue of the authority of the Holy See, the rule which today is the second among those known to the ancient authors, did not originate entirely from the rules of the Chancery, but, as can be seen from the aforementioned Constitution of St. Pius, it derives in part from it, as can be gathered from Barbosa, *De Officiis et Potestatibus Episcopi*, paragraph III, allegation 57. This reservation of benefices which become vacant after the death of Bishops, before the aforementioned Constitution of the Holy Pontiff (2), is similar to the reason we presented on page 67.

[*Latin ed. p. 214*]

214. JURISDICTION. As the Congregation of the Council teaches, as Fagnanus states in Chapter "Concerning Age and Qualification," number 54, and as Benedict XIV teaches in *De Synodo*, I, 4, chapter 7, sections 8 and 9: it could even seem doubtful whether the power granted by the Sacred Congregation to the examiners of candidates for the priesthood, which lasts for six months, had expired; for it appeared from the records of the examination that the judgment of the examiners had been issued on the last day of the semester. Joseph entrusted his defense to a lawyer,

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which was directed primarily to excluding the jurisdiction of the Chapter, a matter about which we have already spoken sufficiently. Doubts: I. "Does the favor of jurisdiction extend to the clergy (N.) regarding the Archpresbyterate in this case?" II. "And how is the election (of Joseph) to the Archpresbyterate to be maintained, so that he may be appointed to it in this case?" RESOLUTION. — On July 8, 1866, after discussing the case, the Congregation of the Council decided: Regarding I: Negatively, and furthermore. Regarding II: Negatively in all respects, and the granting of the benefice pertains to the Holy See. From the ABOVE, WE GATHER THE FOLLOWING: I. Just as it is not fitting to abolish legitimate rights of patronage, so too it is not permissible to reduce ecclesiastical benefices to servitude under this pretext (1). II. Episcopal authority cannot impose any servitude whatsoever on the granting of ecclesiastical benefices that is contrary to free collation. III. Vacant benefices, when the episcopal see is vacant, are reserved to the Apostolic See, according to the second rule of the Chancery, whose (1) worthy words are these from the Council of Trent, session 25, on Reform, chapter 9, which also indicate the manner in which the right of patronage must be proven; and these words are as follows: "Just as it is not fitting to abolish legitimate rights of patronage, or to violate the pious intentions of the faithful in their institution, so too it is not permissible to reduce ecclesiastical benefices to servitude, which many do impudently; therefore, that due order may be observed in all things, the Holy Synod decrees that the title of patronage must be based on a foundation, or endowment, which is shown by an authentic document, and other legal requirements; or also by repeated presentations over a very long period of time, which exceeds human memory, or otherwise according to the disposition of the law."

[*Latin ed. p. 215*]

JURISDICTION. 215 vi (where it flourishes) are also considered to be reserved benefits with full vacancies, which remained with the episcopal see even after the latter became vacant. IV. After a period of six months in parishes of free collation, they are specially reserved to the Holy See, according to the celebrated Constitution of St. Pius V. Regarding appointments. V. In the present case, the exception made from any reservation does not seem to have been sustained, as the election of Joseph, although highly suitable due to his knowledge and other merits, was rejected by the Examiners; however, he was not, as a regular, legitimately ordained to obtain ecclesiastical benefices, but only to receive one benefice, even with the care of souls (1). CHAPTER RESPONSIBILITIES. On April 1, 1865. A distinguished canon of the collegiate church of the town of N. presented a petition to the Most Holy Father, in which he stated that the Chapter, in addition to the conventual Mass, was required to celebrate other Masses, but not to apply them; among these obligations was the celebration of a

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Mass on each festive day in a small church, which was formerly parochial. These obligations must be fulfilled by the canons, each in turn; he who neglects them is noted by name for punishment. Therefore, the same canon requested that those who, due to infirmity, were unable to fulfill this obligation be exempted from such punishment. (1) In the present case, the exception made, even from the right of reservation, does not seem to have been sustained, although the election of Joseph, otherwise suitable due to his knowledge and other merits, was rejected. For he was not, as a regular, legitimately ordained to obtain ecclesiastical benefices; he had only been legitimately ordained by dispensation to receive one ecclesiastical benefice, even with the care of souls. Furthermore, here we are not speaking only of a curacy, but of a chapter dignity to which the care of souls was attached, such as the Archpresbyterate of which we are speaking; so that the Archpriest not only presided over the parish, but also over the collegiate church, according to the customs of that church.

[*Latin ed. p. 216*]

216 ON THE MATTERS OF THE CHAPTER. After petitions were submitted to the Sacred Congregation of the Council, the capitular vicar was heard (for the seat was without its proper pastor), and he reported on the proceedings of the chapter of the aforementioned collegiate church, in which the other canons opposed the presented petition, especially because the aforementioned points were based on two centuries of observance; moreover, they did not deem it appropriate to introduce any innovation in this matter, given the vacancy of the episcopal see. The capitular vicar praised the opinion of the canons and adhered to their vote. However, since the aforementioned chapter, neglecting the episcopal prescriptions, had never truly examined the capitular constitutions, the vicar considered it opportune to request, at this present occasion, that the Sacred Congregation order the chapter to complete those constitutions, so that each one might perform his duties without dispute.

THOSE MATTERS WHICH WERE OBSERVED BY OBLIGATION. General principles were adduced which are observed by obligation, as follows: "Concerning the sick clergy, and after the Constitution of Boniface VIII, the custom... concerning clergy who do not reside," as the authors Reiffenst. L. 3 tit. 6, Barbosa in the same title, no. 3, chap. 1, state, namely, that clerics who are prevented by infirmity from performing their proper duties, not only receive the fruits of their benefice, but also acquire distributions, even if their illness occurred through their own fault. The Sacred Congregation followed this doctrine, as stated in Benedict XIV, *Inst. eccl.* 107. On the contrary, it was observed that the custom of two centuries of observance was of such strength in the matter under consideration that it would contradict the above, as Reiff. *loc. cit.* states, and that customs introduced in a church, whereby canons who are infirm receive only the fruits of their

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prebend, and not the daily distributions, if they have been legitimately prescribed, would nullify the Constitution, as Garcias, part 3 of *Benef.*, vol. 2, no. 3, states, and as has been decided by the Sacred Congregation. Such a custom, according to the same Garcias, is established by a period of 40 years. The Sacred Congregation held this doctrine, as in Savona, on December 18, 1745, in which the following question was proposed: "Can Canon Picconi, during his infirmity, participate in all distributions, both ordinary and extraordinary, and in all other emoluments and revenues, as the other canons who are interested in the case do?" The Sacred Congregation responded:

[*Latin ed. p. 217*]

ON THE CHAPTER OBLIGATIONS. 217. It was decided affirmatively, except for those obligations which, whether arising from the will of the testator, or from the statutes, and the custom of the Church, are due only to those actually present. Concerning the chapter constitutions, it was customary for the Holy Congregation to order that, if they are lacking, they should be drawn up as soon as possible.

RESPONSE. — The Holy Congregation, in the meetings held on April 1, 1865, after considering the aforementioned requests, decided that, for the present, the obligation to draw up the chapter constitutions, in accordance with the law, should be maintained, provided that the custom of Fermo remains in force.

FROM THE COLLECTIONS:

I. The Holy Congregation, in judging cases brought before it, when the episcopal see is vacant, should not introduce innovations which could be more appropriately made with the full complement of members.

II. The obligation to urge the Chapters to draw up their own constitutions, in accordance with the law, is maintained if they do not already have them (1).

III. Although infirm chapter members, who, while in good health, diligently served in the choral offices, are entitled during their illness to receive not only the fruits of their benefice, but also distributions; nevertheless, the contrary custom, that they should not receive these things, is not, in itself, to be condemned.

(i) See Appendix VII and the following case, as explained in the Summary of Requests.

[*Latin ed. p. 218*]

218. OF FINES. July 28, 1816. § Concerning the matter. In the chapter of the cathedral church of N., it had been established in this manner: that from the fines levied upon those who, within a year, were absent from

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their duties, those who did not serve in the choir would contribute a sum, and that these sums, at certain times of the year, would be divided, the diligent receiving a portion, and the negligent receiving none, without any consideration given to their negligence. Some of the members of the chapter, bearing this custom with difficulty, petitioned the Sacred Congregation of Councils, that it would deign to order that, in the future, the fines be distributed according to the law, so that the negligence of the absent might give way to the benefit of those present in the choir. Regarding this matter, the Bishop, who presides over that diocese as Apostolic Administrator, was heard, and he was also requested to examine the chapter in writing and to send a copy of the statutes of the chapter pertaining to this matter; having received these, and having praised the Bishop for his diligence, and having carefully examined the individual foundations of the canonries and benefices, and having noted the burdens of each, the aforementioned custom was confirmed. Furthermore, it was related that the canons, having been summoned to the chapter, had chosen two from their own ranks, one to defend the custom, and another to support the petition; but the latter fulfilled his duty, whereas the former did not. Regarding the copy of the statutes, it was stated that the chapter had once possessed such a document, but that it was now lacking.

THE MATTERS BROUGHT FORWARD FOR DISCUSSION. — Although venerable customs are to be held in high regard, nevertheless, in the present case, the Council of Trent, session 24, chapter 12, concerning reforms, decreed: "Let those who have been absent at the appointed hours receive a fine; but let the others, without any collusion or remission, be deprived of this [benefit], according to the decree of Boniface VIII, which begins: 'A custom, which the Holy Synod restores to use, is not to be hindered by any statutes or customs whatsoever.'" On the contrary, the custom that was being discussed, and indeed, with greater authority, was condemned, not only the one that preceded it, but also those that Cardinal De Luca wished to introduce, as is evident from *de Can. et Cap.*, discourse 33, number 3, and from *Adn. ad Triden.*, discourse 1, number 1.

[*Latin ed. p. 219*]

FALLACIES. L. 21 J. Several resolutions of the Holy Congregation of the Council were cited in this matter, by which such customs of dividing penalties or fines between diligent and negligent members at certain times were condemned and abolished, among which the most recent are the cases of Rome, dated February 22, 1862, in which the Holy Congregation forbade this custom, ordering that the division of fines in the future be done according to the laws and resolutions of the Holy Congregation; also, in January, on August 8, 1863, in response to question III, "Whether and how the custom of dividing fines between diligent and negligent members should

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be maintained," the Holy Congregation answered: "To III. No, in all cases, and the Archbishop should ensure that the division of fines in the future be done according to the laws and resolutions of the Holy Congregation" (1). Also, in Iesi, regarding the summary of prayers proposed on December 22, 1860. (1) Indeed, the fines of those who are absent should be added to those of others who are present in the choir, according to the Council of Trent, Session 2, chapter 3, and Session 24, chapter 24, concerning offenses. Thus, in Carpencloraten, on June 21, 1731, it was stated in the summary of prayers, Book 18, Decret, page 170, "that although those who are absent may be diligently fined, the fines that arise from the prescriptions of the Holy Council should nevertheless be added, so that at the end of the year there may be an equal division among the canons. Thus, those who are absent participate indiscriminately, just as those who were present." Therefore, the question was asked: "Whether the practice of equally dividing fines at the end of the year is permissible?" To which the answer was: "No." And more relevant to our case is the decision in the Asculana case of June 5, 1706, regarding question V, which stated: "Whether distributions not related to the service can be applied to the common mass and divided equally, or rather, to the rate of service?" The Holy Congregation considered that they should be applied to the rate of service, answering: "No" to the first part, and "yes" to the second. Book of Decrees 56, page 170. I said that the fines of the negligent should be added to those of others, according to chapter 12 of Session 24 of the Council of Trent. It is indeed known that another provision is made in chapter 8 of Session 22 of the same Council; namely, it is stated that the fines paid by the negligent should be applied to the needs of the church, or to another pious institution, at the discretion of the Ordinary. Such decrees of the Council have given interpreters the opportunity to say more in order to remove the apparent opposition, but the prevailing opinion teaches that in Session 22, the discussion is about Dignities and others who have revenues separate from the common mass, or about extraordinary and specific distributions that are assigned from the particular revenues of dignities, offices, and positions for the fulfillment of particular obligations attached to those same Dignities; as Angelus Lucidi states in his recent work on the Visitations of the Holy Threshold, volume 1, page 163. However, the Holy Congregation has followed this opinion, with certain additions to specific cases. Thus, for example, in Carinen, on November 7, 1621, there were present in the church of Carinen, certain Dignities which had revenues distinct from the chapter mass, of which certain...

[*Latin ed. p. 220*]

220. CONCERNING FALLEN THINGS. However, the Holy See, as if condemning these customs as corrupt and abusive, has rejected those which are contrary to the spirit of the law: for the distributions were established so

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that, on the one hand, greater attention might be given to divine worship, and, on the other hand, punishment might be inflicted upon the negligent; but such a purpose would not have been sufficiently considered if those who were negligent were subsequently to receive a portion of the penal sum, nor would the collusion prohibited by the Council of Trent be avoided. Furthermore, having observed that the custom in question was not said to be of immemorial antiquity, Grado has been brought under the constitutions of the chapter. Moreover, it is established by the acts of the Holy Visitation, which are preserved in the archives of the Holy See, that the bishops have repeatedly decreed that these constitutions should be drawn up by the chapter; but, for reasons unknown, they have not been drawn up. Indeed, in a recent report on the state of the Church, the Holy See wrote to the bishop: "Since your predecessor, in his letters of 1853, had already informed the cathedral chapter that he had ordered it to establish its own particular statutes, We are surprised that this work has not yet been brought to its conclusion; therefore, if you delay the matter any longer, exercise your right to ensure that these statutes are made known to you and that the canonical observances are prescribed." In response to other such requests, the Holy See gave the following answer.

RESPONSE. The Holy See, having considered the matter on July 28, 1866, decided: "The custom in question is not to be tolerated, and the funds should be distributed only for current expenses in accordance with the law. As for the preparation of the chapter statutes, a period of three months has been assigned, which, having passed without result, the matter is doubtful: 'Whether such distributions, which are lost to those who do not render the proper service, are necessarily for the benefit of the church, to the extent that it needs them, or whether it is within the power of the bishop, even if the church is in need, to apply them to another pious purpose at his discretion?' The Holy See responded: 'These distributions are first to be applied to the benefit of the cathedral church, to the extent that it is in need, and only if it is not in need, then it is within the power of the bishop to apply them to another pious purpose at his discretion,' Lib. 12 Decr., fol. 81, verso. This resolution was again confirmed in the Constitution of Carmen, on June 4, 1701, Lib. 51 Decretor, pages 209 and 304; also in the Constitution of Spoleto, May 8, 1762; in the Constitution of Pisa, December 5, 1846; in the Constitution of Ascoli, March 6, 1847; and in the Constitution of Rome, February 18, 1865.

[*Latin ed. p. 221*]

OF ABSENCES. 221 The Bishop shall enact these regulations and order the Chapter to observe them, transmitting a copy of them to the Holy Congregation. FROM THESE, THE FOLLOWING ARE GATHERED: I. Prescribed distributions should serve as a special recompense so that those devoted to the choir may more zealously perform their duties, and those

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who neglect them should be penalized. II. The monetary penalty, which is incurred by those who are absent or tardy, is, by law, lost by the negligent, and it is not within the power of the Chapter to grant or remit this penalty to those who are negligent. III. In the reparation of these absences, any collusion whatsoever, by which it may seem that the negligent are undergoing punishment; in reality, however, they suffer no penalty, or only a partial one, must be avoided, as prescribed by the Council. IV. In the reparation of absences, in which the negligent are even called upon to contribute from their own resources, there is a certain collusion, by which the law is easily circumvented. V. Regularly, the absences of those who are absent should be made up by others who are present. VI. Generally, the case should be excepted in which a Canon has a distinct and separate income from the common fund; in such a case, the expenses for the church, or for the altar, or for a pious work, are to be paid according to the law. VII. Each Chapter is to be held to establish its own constitutions and to submit them to the Bishop for confirmation; if the Chapters neglect to compose and write these, it is the duty of the Bishop to enact them, to make them binding, and to transmit them to the Chapter (1). (i) See Appendix VII.

[*Latin ed. p. 222*]

222 FROM THE ACTS OF THE SYNOD OF BISHOPS AND THE ESTABLISHMENT OF A BENEFICE, April 27, 1866. Summary of the case. In the Diocese N. in Italia, there were three parish churches with ample revenues, namely, one of Saint Christina, another of Saint Paul, and a third of Saint Peter; but there was also another, called of the Holy Cross, whose revenues were so meager that it barely reached twenty scudi per year. Therefore, the Bishop, observing this great disparity in revenues, conceived the idea in the year 1840 to impose a pension on the pastors of these three aforementioned parish churches, to be paid annually to the pastor of the church of the Holy Cross, namely, twenty scudi from the pastor of Saint Christina, twenty-five scudi from the pastor of Saint Paul, and ten scudi from the pastor of Saint Peter. This, the Bishop believed, was a just and proper way to achieve his goal, namely, that in the notices published, in which candidates were invited to apply for the vacant churches, the aforementioned pension should be clearly stated; that before the candidates were admitted to the competition, they should sign a written commitment in which they explicitly promised to pay the aforementioned pension without fail; and finally, that in the letters of appointment, in which each pastor was assigned to a parish, the pension itself should be expressly reserved for the benefit of the pastor of the Holy Cross. This method was followed meticulously in every respect, whenever the opportunity arose; indeed, for many years, the three pastors paid the pension, which each was required to pay, to the pastor of the Holy Cross without any complaint. But in the year 1863, the pastor of Saint Christina refused to bear this burden, claiming that, according to

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the censure of the Apostolic Constitutions, parish churches could not be burdened with pensions by the Bishops. However, since all admonitions and exhortations from the Bishop had ceased...

[*Latin ed. p. 223*]

Regarding the pensions: The parish priest of Saint Christina refused to pay the customary pension to the parish priest of Saint Cross, and the Bishop, in order to prevent this, sought recourse to the Sacred Congregation of Bishops and Regulars, so that this Congregation might support the imposition of these three pensions with its authority. The parties involved were notified of the matter, and instructed to present their contributions to the Sacred Order. Indeed, the parish priest of Saint Paul, and another parish priest, declared in writing that they would not obstruct the payment of the customary pension, and promised to pay it faithfully in the future, as they had done before. However, this was not the case with the parish priest of Saint Christina: he persisted in refusing the pension, and presented documents in which he vigorously defended his rights. Given these circumstances, the Sacred Congregation proposed that the matter be debated and resolved in a plenary session of the Fathers.

Synopsis of the principles involved: Pope Innocent XII ordered the promulgation of an edict on November 11, 1692, by which it was forbidden that parish churches, with no exceptions, especially those subject to the patronage of laymen, be burdened with any pension obligations, and he strictly prescribed that this should be observed by the Ordinaries even when they themselves were granting such benefits. This very edict was included in the Constitution of Pope Benedict XIII, beginning with the words "Quanta pastoribus," in September of 1724, and was solemnly renewed and confirmed with these words: "Wishing to provide opportunely, so that the aforementioned pastors of souls may in the future have a more convenient means of supporting themselves, and also of repairing their parish churches, whenever necessary, of adorning them, and of providing the necessary furnishings for the Divine cult, and also of assisting the poor and other miserable persons with what remains after their honest and proper maintenance, and moreover, wishing to encourage them to bear the labors and inconveniences of the ministry they have undertaken with greater willingness, and to attend to the flock with greater zeal, in which they are placed to govern the people of God; by our own motion, and with certain knowledge and mature deliberation, and with the fullness of Apostolic power, we have decreed and established the following, which shall remain perpetually valid, in this our..."

[*Latin ed. p. 224*]

224. CONCERNING PENSIONS. We most fully confirm and approve the Edict of the deceased, and all and each thing contained therein, and we

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desire that it be observed without fail by all to whom it pertains... Nevertheless, reserving to Ourselves, and to the Roman Pontiff for the time being, the faculty and authority of imposing upon the aforementioned parochial churches those pensions which the revenues of benefices and the condition of places and persons may permit, solely for the benefit and advantage of the fabric of those same churches, so that they may be more promptly repaired, suitably maintained, and, as is fitting, even increased with appropriate adornments. "With this, therefore, established by Apostolic decree, there seemed to be no doubt that the reservation of those three pensions in favor of the parish of S. Croce would be declared entirely valid; since the Apostolic authority, by whose power that reservation could be maintained, had not intervened in any way; nor did the Bishop deny it. However, since the three parish priests had given their consent to being subject to the pension, and thus had acknowledged and observed that obligation in fact, the question arose whether it would be advisable for the Apostolic See to disregard the dissent of the parish priest of S. Christinae, and to compel him to contribute to the payment of that pension. WHAT SEEMED TO BE ADVANTAGEOUS TO THE PARISH PRIEST OF S. CHRISTINAE. — No one is unaware that it is the established practice of the Apostolic See that, in granting favors, the right sought by one should never injure another. Indeed, if the Holy Father had a firm and valid claim to the pension in question, he would be doing a most obvious injustice to the parish priest of S. Christinae: for he would be forcing him to pay a pension which, since it is not legally due, would reduce and diminish the revenues of the parish itself. It would be wrongly objected that the parish priest had acknowledged the pension, both in writing and in deed, as if the legal maxim *Regula 21 in 6°* "that which has once pleased cannot displease more" were applicable. For in cases of consent, the effect of which depends on the good pleasure of the Apostolic See, sound reason dictates that anyone, as long as the matter is still whole, may validly and lawfully revoke their consent. Indeed, the consent given by the parish priest was dependent on the granting of a favor, which the Apostolic See had not yet granted: therefore,

[*Latin ed. p. 225*]

PENSIONS. Therefore, it was decided that the agreement previously made should be considered null and void, as if it had never been made, and as if it had not been fulfilled at all. Furthermore, it was noted that in the constitution of Benedict XIII, which begins "Quanta pastoribus," while the right of the Apostolic See to impose pensions on even parochial churches is indeed reserved, this is nevertheless expressly limited to those cases in which pensions are imposed in order that the churches themselves, lacking other means, may be restored, or provided with suitable furnishings. Indeed, everyone could see that the pension in question had been imposed not for the benefit of the church itself, but for the benefit of another, en-

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tirely distinct entity. Therefore, it was concluded that the imposition of the pension could not be sustained by any law.

WHAT WAS THE RESPONSE IN FAVOR OF THE PAROCHIAL VICAR OF SAINT CROSS? – Although it is true that the Apostolic See always has the solemn obligation not to infringe upon the rights of another, nevertheless, this principle could not be rigidly applied in this case. We were dealing with a pension whose fairness and justice, if considered internally, could not be questioned: for the parish of Saint Christina was abundant with considerable revenues (and the same could be said of the other two parishes of Saint Peter and Saint Christina); whereas, on the other hand, the parish of Saint Cross was so poor that, if deprived of these pensions, the Bishop would not have sufficient revenues to provide for the needs of that parish. Furthermore, the parochial vicar of Saint Christina seemed to have just cause and merit in his complaints: he himself had not inconsiderately or unexpectedly undertaken this burden, but had done so deliberately and for many years, and had borne it peacefully. Therefore, if there was any defect in the imposition of these pensions, it was only due to a lack of Apostolic authority; and therefore, as they say, the Apostolic See was not legally prohibited from intervening retroactively. For otherwise, as we noted earlier, the opulence of the church of Saint Christina, and the extreme poverty of the parish of Saint Cross, provided the most evident canonical reason why it was most deserving and easiest to grant the requested remedy. With these considerations in mind, the controversy was brought before the assembled Fathers for discussion.

EXPOSITION OF THE QUESTION. "Whether and how to petition the Most Holy Father for the confirmation of" the pensions imposed on the parishes of Saint Paul and Saint Peter, Acts, vol. II, fasc. XFL, 15.

[*Latin ed. p. 226*]

226. PENSIONS. "Concerning the matter pertaining to the parish of Saint Christina, notwithstanding opposition." The Parochus (parish priest) of this last parish presented the case. RESPONSE. On April 27, 1866, the Most Reverend Fathers of the Sacred Congregation of Bishops and Regulars, having taken cognizance of the matter, responded: affirmatively in all respects. From this, the following are deduced: I. Pensions cannot be imposed without the Apostolic approval upon parochial benefices. II. Ordinarily speaking, the Apostolic See permits pensions to be imposed only in those cases in which the same parochial churches are to be repaired, or furnished with sacred furnishings. III. In the present case, however, the Sacred Congregation judged that it should be consulted regarding the imposition of the pension, which was deemed just by the circumstances, and which was far removed from the prejudice of the Parochus, who had already willingly agreed to pay the pension. PRESENTATION AND ESTABLISHMENT. On March 14, 1865, and June 1, 1866. Summary of the

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case. Horatius, a Knight of Jerusalem, originally from the city and diocese of A in Upper Italy, had established his home and residence from his early youth in the city of B in Lower Italy, where he had acquired great wealth and a considerable patrimony. Before his death, he founded, according to the prescriptions of the sacred canons, a collegiate church for Canons in the city of B, and he reserved for himself and his descendants, whether male or female, the right of patronage, both active and passive, over these same Canons; and, these lines having completely failed, he transferred the right of active patronage to the municipal council of the city of A, from which, as we have said, he himself had originated; and with regard to the passive right, he added the priests of that same city.

[*Latin ed. p. 227*]

PRESENTATION AND INSTITUTION. 227 Since Horace, under the protection and patronage of a most noble family from his native city, was living a life of faith, he enacted this particular law: 1° that the Syndic, as patron, should announce the name of his chosen priest to his fellow citizens within a period of no more than four months, as is commonly established by sacred canons, and indeed within a period of three months; 2° that the eldest son of the aforementioned noble family should have the canonical right to present the priest nominated by the Syndic to the Cardinal, who holds a most important office in the Roman Curia; and that the Cardinal would then confer the canonical prebend upon the priest so nominated. If, however, the three-month period granted to the Syndic should unfortunately elapse without result, the law granted the eldest son of the aforementioned family the free power to present any priest, provided that he possessed the necessary and appropriate qualities in accordance with the norms of canon law, to the Cardinal for appointment. On the first of October, in the year 1863, one of these canonical positions became vacant; and since the descendants of the founder, both male and female, had completely disappeared, the patron Syndic publicly invited competitors in November to present letters of recommendation, in which the qualities prescribed by canon law and the law of the foundation, commonly known as requirements, would be demonstrated, within a period of eight days in the municipal building. Thus, two competitors presented themselves in due time, namely, first, a cleric, who, although not lacking in other qualities, came from a certain town near the city A, and not at all from the city itself; and second, a priest who was truly born in the city A. But the Syndic, before the three-month period had elapsed, nominated the aforementioned cleric, setting aside the priest, and indeed, not even mentioning him. The priest, having thus been rejected after a few months, appealed to the Sacred Congregation of the Holy Office and Regular Canons, requesting that the nomination of the cleric made by the Syndic be declared null and void, and that the authority of the eldest son, who had the right to present the candidate, be upheld, so

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that he might be able to present himself to the Cardinal for the conferral of the canonical prebend. Thus, the Sacred Congregation, in accordance with its statutes, not only considered the parties aspiring to the canonry, but also the Syndic (who maintained his position until the end of the case).

[*Latin ed. p. 228*]

228 OF PRESENTATION AND INSTITUTION. (silence) and Dynast, and the Cardinal collator, and the Bishop of the diocese of A, he ordered to be heard in writing. Dynast simply replied that he could not present the aforementioned Priest, because, according to the prescriptions of the sacred canons, he did not consider him worthy in the least: for indeed, many objections were raised against him. The Cardinal, the institutor, agreed with this opinion. However, the diocesan Bishop, although he did not conceal certain defects in the aforementioned Priest, nevertheless declared that he did not consider him so unworthy as to be rejected from attaining the canonry. A dispute ensued.

WHAT WAS DISPUTED BY THE PRIEST IN LAW. — In order to defend the rights of the Priest, a distinction was made between a passive, mediate calling, and another which is called immediate. A passive, mediate calling is said to take place when several persons of the class of those called are present, who, by equal measure, possess all the qualities prescribed by the Founder and by canon law: in which case, the active patron is free to nominate from among them the person who seems most suitable to him; and therefore, in order to obtain the benefice, the nomination and presentation of such a patron are absolutely necessary. A passive, immediate calling is said to take place when only one person is present, in whom all the qualities prescribed by canon law and by the Founder are present. In this case, the active patron is absolutely obliged to nominate this person, so that this person, having been nominated by the Founder himself, without any intermediary whatsoever, has the right to obtain the benefice. This doctrine, which is common among interpreters of canon law, was supported by the authority of Fargna, *De iur. patr.*, p. 2, can. 1 and 2, esp. 9, n. 20 and seq.; Pitonii, *De contr. patr.*, Alleg. 7, n. 2 and 3; De Luca, Disc. 45, n. 2; *De Iur. patr.*, Rota in Hortana, Ben. i, June 1708.

Therefore, since only one Priest from the city of A, in which the Founder was born, had offered himself, it was clear that a passive, immediate calling was to be understood to have taken place in the same case; and furthermore, the Cleric nominated by the Syndic was to be declared to be in no way nominated, both because he lacked the priesthood, and because he was not a native of the city of A.

[*Latin ed. p. 229*]

PRESENTATION AND INSTITUTION. 229 But meanwhile, another circumstance arose which entirely prevented the same Cleric from receiving

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the canonry. For while these things were happening, the selection of young men in the Cleric's homeland had been completed, who were being conscripted to enter military service. Indeed, among the young men who were thus conscripted, the Cleric was numbered: and thus it happened that he completely abandoned ecclesiastical duties, and, clothed in a military uniform, earned a stipend among the soldiers, as is evident from an irrefutable testimonial. Indeed, if a simple entry into military service causes benefits already held by a soldier to be considered, by law, as vacant, it must be said that this happens all the more strongly when someone does not yet possess a benefit, but only holds the right to acquire it. Therefore, when this circumstance arose, against which there was no strong reason, it was deemed useless to bring forward legal arguments which might seem to favor the Cleric. The matter was therefore resolved in doubt, "Whether and how authority should be granted to Dynast (N. N.) to present (N. N.) as a priest to the Most Eminent Cardinal, so that he may be canonically instituted to the vacant canonry in this case."

RESPONSE. — The Most Eminent Fathers, having knowledge of the case on March 24, 1865, responded: "Considering the deficiency in the nomination made in the person of Cleric N.N., it should be notified to the Syndic of the city (A.) for a new nomination within three months."

CONTINUATION OF THE CAUSE. — The Dynast, who had the right to present, and who had seemed remiss in defending his rights in the previous stage of the case (for he had not, as much as was necessary, presented the reasons favorable to him, nor defended them), considered himself to have been unjustly burdened by the resolution of the Holy Congregation, and therefore, at an opportune time, requested that the case be recognized or reviewed, and obtained this. The same was done by the Priest. Hence, the question again ascended to the plenary session of the Holy Congregation. But, as is customary, before all else, all parties concerned were again notified of this matter, and invited to present any new arguments to the Holy Congregation, if they had any. This was indeed done by all parties, except for the Cleric and the Syndic, who...

[*Latin ed. p. 230*]

230 PRESENTATION AND INSTITUTION. They had already determined a specific time, and never afterwards gave any response. Furthermore, the objections raised by Novae were more or less those which we mentioned above; while Dynasta, defending her own rights, argued first of all that the aforementioned Priest did not enjoy any right to the vacant Canonry, because he had not been presented by the Syndic; nor could he have availed himself of the right of immediate vocation. For he was not the only one who was passively called, since all the Priests of the City of A. were called by the Founder; therefore, he required the presentation of the Syndic, the patron, according to what was stated by the Sacred

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Rota in Burgen, in the case of the Chapelry of January 14, 1732, before Crescendo. Having then omitted the question of the Cleric presented by the Syndic for the reasons stated, Dynasta furthermore argued that, in this case, the Syndic had relinquished the right of presentation. She noted that the Founder had granted the Syndic only a limited power, so that he could scarcely be considered a true patron, while Dynasta, on the other hand, should be considered the true patron, who is obliged to inquire into the suitability of the person presented to her by the Syndic, and to present that person to the Ordinary Cardinal for institution. Moreover, Dynasta pointed out that, in addition to the above, the Syndic, by presenting to her an unsuitable person in the aforementioned Cleric, had allowed the useful period of three months to elapse, thereby infringing upon her right freely to nominate whomever she wished, according to the power granted to her by the Founder. Since the Syndic gave no further response, he seemed to have renounced any right he might have had, through this urban silence. Furthermore, other matters were added, namely, the question of law which has been most debated by the Authors, concerning whether and when a lay or ecclesiastical patron can nominate another person after the useful period has elapsed following the presentation of an unsuitable person; this can be read in what Fagnanus writes in chapter [citation omitted], as well as in our work, *De Officio Ordinarii* from number 27 to the end, and in Pitonius, *Disceptatio Eccles.* 4, number 47 and following. With these and other considerations added, the case was again presented under the formula of doubt: "Whether it is necessary to retract from the resolution reached on March 31, 1865, in this case."

FINAL RESOLUTION. — The Fathers, after again discussing the case on June 1, 1866, wrote: "It is the right (of Dynasta N. N.) to..."

[*Latin ed. p. 231*]

PRESENTATION AND INSTITUTION. Regarding the procedure to be followed in the case of nomination, and presentation according to the will, in accordance with the law of the foundation, and further matters. From the cited texts, we gather the following:

I. Although the time allotted for nominating a candidate to a patron, by common law, is a quarter of a year, this time may, in fact, be shortened by a special law of the foundation.

II. A call to a benefice, which is called a passive call, is divided into a mediate and an immediate call.

III. A mediate call occurs when several individuals are found to be equally endowed with the qualities prescribed. In such a case, it is necessary to have the nomination of the active patron in order to obtain the benefice.

IV. An immediate call exists when only one individual is found to pos-

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sess the required qualities. This individual is, therefore, considered to be called by the Founder himself, so that he has the right to obtain the benefice without the nomination of the active patron.

V. The patron, within the prescribed time, has the right to nominate a person to the benefice; if that person subsequently proves to be deficient, the patron has the right to nominate another, even if the prescribed time has elapsed.

VI. Indeed, in the same circumstances, the lay patron also has this same right, even if he nominated an unsuitable person, provided that it does not appear that the patron knowingly made such a nomination (1).

(1) A very debated question among the Doctors is whether a lay patron, who nominates an unsuitable person within the prescribed quarter of a year, can, after the nomination has been annulled by the judge, nominate another, beginning a new term from the day of the annulment. The reasons that are usually given in favor of different and contradictory opinions can be found among the cited authors. The Sacred Congregations seem to follow the opinion that is more favorable to the patrons, such as the one that I have presented. In addition to the present case, there appears to be another case that was recently discussed before the Sacred Congregation on May 10, 1862, in which the case of a lay patron, Joseph, who did not properly follow the law of the foundation, was considered. He nominated his son, Achilles, to a minor benefice. Achilles was of the proper gender for candidates, but he was twenty-two years old, not yet a cleric, and addicted to carpentry, and he was not sufficiently instructed in the catechism. Furthermore, a certain Thomas was nominated by another presumed patron, who was also of the proper gender, and who appeared to possess the sufficient qualities that the Founder had prescribed, although he was not yet a cleric. When Achilles requested that the fruits of the benefice be applied to his literary education until he became suitable to obtain the benefice, Thomas...

[*Latin ed. p. 232*]

232. PRESENTATION AND INSTITUTION, SECTION VII. In the present case, the Syndic, by any right he might have had, has, in the new proposition of the cause, relinquished his position, having, through his obstinacy, or as if negligent, or as if tacitly renouncing his right, given place to devolution.

MOST HOLY CONGREGATION! OF RITES. CONCERNING CHALICES MADE OF ALUMINUM. Dated 1 September 1866. When chalices began to be made of aluminum, whether pure or mixed with other metals, the Bishop N. inquired of the Sacred Congregation for Rites: "Whether such chalices can be used in the Holy Sacrifice of the Mass." Before the Sacred Congregation rendered judgment on this matter, it heard the opinion of a Consultor, the summary of which is as follows.

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Opinion of the Consultor, reduced to writing. The Consultor initially observed (1) that chalices are classified as either materials prescribed, materials permitted, or materials prohibited; and that prohibitions have been imposed at various times on chalices made of wood, stone, horn, and glass. Two doubts were proposed to the Sacred Congregation:

I. "Whether and how assent should be given to the prayers of Achilles..." in this case; and to the extent that the answer is negative:

II. "Whether and how the presentation made in favor of Thomas..." should be sustained in this case.

The Sacred Congregation responded: To I, negatively. To II, negatively, and it is stipulated that a term be assigned to Joseph for completing the new presentation, conforming to the form of the foundation; and that, should this term be unproductively elapsed, Thomas shall remain before the Ordinary, with due observance.

(1) The Consultor chosen was Franciscus Regnani, professor of physics and chemistry.

[*Latin ed. p. 233*]

CONCERNING CHALICES MADE OF ALUMINUM. 28. The chalice should be made of metal, either of iron, or of brass. Even earthenware chalices are permitted; indeed, they have always been in use, and now only golden or silver chalices are prescribed; all of which is clearly derived from the general rubrics or from the councils. Gavant, Commentary on the Rubrics concerning the preparation of priests: "The Church, in many Synods, has prohibited any priest from presuming to use a chalice made of glass, iron, wood, or brass, or of horn." Also, Benedict XIV, in the Constitution *Etsi pastoralis*, on May 24, 1749, § 6: "Each priest must offer the sacrifice in a golden or silver chalice, or at least in an earthenware chalice." Also, the Rubric of the Missal, Part III, chapter 10, number 1: "If a chalice with a paten is not available, the chalice must have a cup that is either golden or silver, or earthenware, but not iron or glass." Also, from the Council of Rheims, chapter 6: "If someone is very poor, let him at least have an earthenware chalice." Also, Quarti, from the chapter *Vasa* and from the chapter *Ut calix*, in the section on Consecration, 1, shows that the chalice and paten must necessarily be made of gold, or silver, or earthenware. Finally, from the general Rubric of the Roman Missal, Part II, title 1, concerning the preparation of priests to celebrate: "The priest prepares the chalice, which must be either golden or silver, or at least have a silver cup inside, plated with gold." Therefore, I investigated the reasons for this law in three distinct articles, and considered in which of the aforementioned categories aluminum, and aluminum-bronze, could be placed. Meanwhile, it was pointed out that such reasons are not contained in the rubrics, but must be sought in the Synods and in the testimonies of writers.

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CHALICES FORBIDDEN. Certain materials, for example, wood, have been forbidden because of their porosity, which is commonly said to cause the absorption of the sacred liquids. No one should presume to celebrate Mass in a wooden chalice: Council of Rheims, c. 6, because (the Glossary adds) wood is porous, and would absorb the consecrated species. Certain materials, such as glass, are forbidden because of their fragility, which could cause the spilling of the sacred species. No one should presume to celebrate Mass in a glass chalice: Ibid., because (the Glossary adds) glass is fragile, and there would be a risk of spillage. Certain materials, such as iron and brass, are forbidden because of the rust to which they are subject. A chalice should not be made of iron or brass: Ibid., because (the Glossary adds) the virtue of wine causes rust, which provokes vomiting. For these reasons, aluminum is not forbidden.

[*Latin ed. p. 234*]

234. CONCERNING CALICES MADE OF ALUMINUM. For, 1. It is porous, like glass, and therefore repels imbibition. 2. It possesses a remarkable tenacity; when drawn into a wire with a diameter equal to a millimeter, it can withstand a pull of twenty kilograms. 3. Like silver, it is not subject to rust; indeed, unlike silver itself, it is not affected at all by sulfurous exhalations. 4. Finally, it is so light that a chalice made with a cup of pure aluminum, and a base made of another metal, would possess great stability and firmness. For the specific gravity of aluminum is 2.56 grams, i.e., one-fourth the weight of silver. However, if one considers the law regarding inauration, pure aluminum will be included among the prohibited materials: for the very person who was in charge of making such chalices, having been questioned about this matter by a Consultor, stated that 1° pure aluminum is very difficult to inaurate; 2° and even if it is inaurated, it quickly loses the gold. Therefore, unless the Church permits chalices made with aluminum cups to be left uninaurated, or until another method is found to inaurate them in a stable manner, this metal must be considered to be among the prohibited materials. However, aluminum alloy, or the amalgam of copper and aluminum in a ratio of one to nine (regarding which the proportion of the mixture is especially important), 1° is more porous than silver, but its porosity is not continuous, and therefore it is not subject to imbibition, nor to deposits or microscopic cavities of liquid substances. 2° It possesses the same tenacity as iron: that is, the resistance to traction, which is exhibited at 65 kilograms. 3° It is very suitable for the construction of a chalice, so that it may consist of parts that are equally balanced and possess firmness: while its weight is not increased. It is less subject to rust than copper, lead, or brass; but it is not entirely immune to it: especially since it itself is a kind of brass, i.e., copper exhibiting the appearance of gold. It is true that rust can be prevented by inauration; but 1° in this way, one can test whether any material, if

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uninaurated, can be permitted. 2° Inauration is easily lost, especially at the rim of the chalice, and especially if it is made in the galvanic manner.

[*Latin ed. p. 235*]

CONCERNING CHALICES MADE OF ALUMINUM. 235 3° The law concerning consecration is not based on the laws of alchemy, but on the duty of reverence owed to the Most Holy Sacrament of the Altar: to which also the prescription regarding other materials, of which we shall speak shortly, is subject. CHALICES PRESCRIBED.—It is well known that the use of gold and silver chalices has been esteemed as a mark of honor and price, so that the splendor of the Church might be increased, and the real presence of Christ the Lord under the species of the Sacraments might be distinguished by a striking testimony of cult. Two documents here provide a clear illustration. One is from the Council of Tibur, chapter 18, in the collection of Gratian, De Consecr., chapter 43, d. 1. "Urban," the Pope, ordered that all sacred vessels be made of silver. "For in this, as in other matters of worship, the splendor of the churches has increased more and more with the passage of time." In our own days, "we who are servants of the family of the Church, so that the splendor of the Mother Church may not be diminished, but rather increased and amplified, decree that henceforth no priest shall presume to perform the sacred mysteries of the Body and Blood of Our Lord Jesus Christ in wooden vessels in any way, lest He, to whom we ought to be pleasing, be displeased." The other is from the book of Suger, abbot, concerning matters undertaken during his administration: "Everyone abounds in his own sense: I confess that it has pleased me above all things that whatever is most precious, and whatever is most dear, should be dedicated to the administration of the most holy Eucharist. If golden libation bowls, if golden phials, if golden mortars for collecting the blood of goats or calves or red heifers, were used at the command of God or the Prophet, how much more should golden vessels, precious stones, and whatever is most beloved among all creatures, be continuously and with full devotion offered in service for the reception of the Blood of Jesus Christ?" For the same reasons, the law was enacted concerning chalices that were not gold, that they should be gilded. With these premises, the Consultor proceeded to the matter of aluminum and aluminum alloy. Although aluminum alloy possesses a very excellent appearance of gold, nevertheless, I consider that, for the reasons stated above, it should be regarded as a third metal, inferior to gold and silver, for the making of chalices.

[*Latin ed. p. 236*]

236 CONCERNING CALICES MADE OF ALUMINUM. It is indeed doubtful whether pure aluminum can be used. However, as long as the law of consecration remains in force within the Church, and as

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long as that metal is deemed suitable for receiving consecration, calices made of simple aluminum seem to be to be considered forbidden. But since aluminum, with some of its chemical properties mentioned above, surpasses silver, a certain doubt might arise concerning this matter: "Is it not unreasonable that the prescription for cups of gold or silver, or silver cups lined with gold, should be added, and that a prescription for cups of simple, unadorned aluminum, a metal equally noble as silver, should also be added?" In truth, it seemed to the Consultors that this question should be answered in the negative. For, 1° aluminum does not possess the luster nor the brilliance that can be compared to that of silver; and yet, its gilding is prescribed. The priest prepares the chalice, which ought to be either gold, or silver, or at least have a silver cup inside lined with gold. *Rubr. gen. Miss. De praeparat. Sacerdot. celebraturi.* 2° In the common estimation of people, aluminum is not considered among the noble metals. 3° The nobility of aluminum, (whose value may perhaps even decrease) is not of such a nature as to express the utmost reverence due to the Most Holy Sacrament of the Eucharist. CALICES PERMISSIBLE.—At no time, especially when precious vessels have been sold to redeem captives or to support the poor, has the Church permitted chalices of lesser value. Lest the Consultors should descend to particular materials which have perhaps been permitted by some Pope, or by a Synod, for the purpose of making chalice cups when extreme poverty prevails, it is generally and perpetually permitted by the Church to use tin, as has been demonstrated above. Although tin, although not noble nor precious, possesses certain physical and chemical properties, as mentioned above, which are necessary for chalices. For the purest tin, which is commonly available in commerce, 1° is not porous with continuous porosity; 2° is not subject to rust; 3° finally, it is not so fragile as to easily break.

[*Latin ed. p. 237*]

CONCERNING CALICES MADE OF ALUMINUM. 237. The danger of using aluminum must be feared, nor is it so soft that it can easily be dented by probable collisions. Therefore, a new question arises: "While the law permits the making of chalices from gold, or gold-plated silver, can an exception be made, due to poverty, to allow the use of chalices made of aluminum, or of aluminum alloy?" To fully and accurately address this question, the Consultor established a certain distinction, which could be said to concern established law, and law to be established: That is to say, is it being asked whether pure aluminum, and this aluminum alloy, under specified conditions and for the reasons for which the sacred Liturgy permits the use of metal vessels, can be considered permissible, and therefore implicitly allowed, in cases of poverty? Or is it being asked whether the Apostolic See, setting aside these reasons and conditions to some extent, wishes to grant something new by its supreme authority, thereby extend-

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ing the liturgical prescriptions somewhat? The Consultor believed that the first question should be answered negatively. For pure aluminum, as it is currently used in the process of gilding, cannot be sincerely hoped to be suitable for receiving the sacred elements. Furthermore, a chalice with a cup made of pure aluminum (as is the case in the present state of the art) would cost more than if the cup were made of silver and the base of copper. As for the aluminum alloy, it is excluded by the current law, since it is far inferior to the metal vessel itself in terms of its resistance to rust: especially since, due to its brilliant golden color, it would be very difficult to determine whether it has lost its gilding, or not. As for the second question, if the Holy See, in order to consider the abuse that the permission to use metal vessels entails, and which cannot be avoided, or for other reasons known to it, wishes to grant something in this matter, and to exercise leniency, then, as far as the materials known up to this time are concerned, if any exceptions could be tolerated and deserved, they would be pure aluminum, and its alloy, as mentioned above. For these materials, on the one hand, present only remote dangers, to which the Church intends to direct the attention by prohibiting certain substances; on the other hand, they are...

[*Latin ed. p. 238*]

238. CONCERNING CALICES MADE OF ALUMINUM. Those adorned with jewels, which are not very different from those which the Church requires for the chalice. Indeed, it must be admitted that, after gold and platinum, aluminum is the most noble metal among those recognized by chemistry; just as the amalgam of this metal, of which we are speaking here, whether of the kind called aurichalcum or of any other metal that exhibits the appearance of gold, surpasses all others. However, such a concession, if indeed it should generally be granted by the Holy See, cannot be put into practice without the consent of the Ordinaries, to whom it pertains to determine: 1° whether true poverty is present in that particular case; 2° whether the amalgam, or the fusion of aluminum and copper, is truly that of which we are speaking here; 3° whether it is certainly known that the gilding of the chalice has been made with so many grams of gold, so that due durability and firmness may be expected; 4° Finally, whether the economy in expenses is of such a nature as to deserve an exception to the general rule. Having explained these matters, the Consultor, expressing his opinions on the following questions, manifested his views.

I. Are aluminum, or the mixture of aluminum and copper in the proportion of one to nine, and pure aluminum, to be considered among the prohibited materials with regard to the manufacture of chalices, because of their physical and chemical qualities? It was the opinion of the Consultor: Affirmative.

II. Is pure aluminum endowed with such qualities that it can be considered equal to gold, as prescribed, so that it is permissible to make chalices

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from it, and so that it can be used without being gilded? Response: Negative.

III. If the Holy See, because of the poverty of some churches, or for other reasons known to it, wishes to allow the Ordinaries to add to or supplement the concession already in force regarding the paten, are aluminum and the amalgam of aluminum suitable materials (among those hitherto known) for such a concession? Response: Affirmative.

With these matters thus learnedly explained by the Consultor, it was the task of the Sacred Congregation to resolve the aforementioned question.

RESPONSE. The Sacred Congregation of Rites, after deliberations held on September 1, 1866, gave the following response: Nothing is to be changed.

[*Latin ed. p. 239*]

CONCERNING CALICES MADE OF ALUMINUM. 230 From ns COLLECTIONS: I. The materials with which chalices are made for the Divine Sacrifice are sometimes permitted, sometimes prescribed, and sometimes forbidden. II. Chalices made of pure aluminum, or mixed with other metals, cannot conveniently or easily be included in either of the aforementioned classes of materials. III. It is the opinion of the Holy See that it does not deem it expedient to introduce into the Divine Worship materials that, although they may appear more suitable or better in some respect, nevertheless bear the mark of novelty, foreign to the venerable antiquity (1). OF THE CITY. DECREE. — "Since it often happens that some Feast of the Instruments of the Lord's Passion coincides with the Feast of the Chair of Saint Peter in Antioch, the Editors of the Calendars have diverged in their opinions regarding which feast should be given precedence. In order to eliminate this variety, the Prefect of the Ceremonies of the Patriarchal Basilica of Saint Liberius deemed it appropriate to seek a solution to the following question from the Sacred Congregation of Rites: When the Feast of the Chair of Saint Peter in Antioch coincides with the Feast of the Spear and Nails of Our Lord Jesus Christ, or with the feast of another instrument of His Passion, which should be given precedence?" And the aforementioned Sacred Congregation, after hearing the report made by the undersigned Secretary, and after mature and careful deliberation, and after also hearing the opinion given in writing by another of the Masters of the Apostolic Ceremonies, has decreed as follows: When the Feast of the Spear and Nails, or of another instrument of the Passion of Our Lord Jesus Christ, coincides, the Feast of that instrument should precede the Feast of the Chair of Saint Peter in Antioch. (1). See also in Vol. I, page 38 and following.

[*Latin ed. p. 240*]

210. In the city of Saint Peter, that is to say, granting the entire Vespers service to that feast – and he ordered that this decree be printed. And

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thus he decreed and commanded that it be observed. On September 1, 1866. C. Episc. Portuen. and S. Rufinae, Cardinal Patrizi, S. R. C., Prefect. D. Bartolini, S. R. C., Secretary. ROME. SEC. & BKXAXE. * ' . CONCERNING THE CANONIZATION OF THE BLESSED LEONARD OF PORTUM MAURITIO, APOSTOLIC MISSIONARY OF THE ORDER OF MINORS OF THE STRICT OBSERVANCE OF SAINT FRANCIS, IN THE SACRED HALL OF SAINT BONAVENTURE, IN THE CITY. CONCERNING THE DOUBT: Whether it is permissible to proceed to the solemn canonization of the Blessed Leonard of Portu Mauritio? DECREE. "In these latter times, the Lord has sent a most excellent worker to gather in His harvest, namely, the Blessed Leonard of Portu Mauritio. Following the precept of Christ, he, wearing a simple tunic, and without a sack, nor a basket, nor shoes, nor gold and silver, nor money in his belt, entered every city and village, and seeing the crowds who desired the bread of life, and since there was no one to break it to them, he was moved with pity: and because many were afflicted by the pleasures of the world, and held captive in the snares of sin to their confusion, he said to them: "Repent, for the kingdom of heaven is at hand." Almost countless sinners, hearing his voice as if it were the voice of Christ, and confessing their deeds in ashes and sackcloth, did penance. When the Blessed Leonard, having completed his labors, returned to the Lord, and received from His hand an incorruptible crown of glory, he also shone forth with the power of miracles, even after the granting of veneration. After these three examinations, most skillfully carried out by the Congregation of Sacred Rites, the Supreme Pontiff Gregory XVI, on the sixteenth day before the Kalends of April, in the year 1839, declared that the first miracle of the Blessed Leonard had been brought about by the intervention of God: and Our Most Holy Lord, Pope Pius IX, on the fourth day before the Nones of August of the following year, decreed that a second miracle had occurred, which Almighty God had accomplished through the intercession of the same Blessed one. "Therefore, in order to bring this cause to a conclusion, which was most desired by the citizens of our beloved city, only one thing remained, namely, that in the new General Elections..."

[*Latin ed. p. 241*]

241 ROME, OR ALBIGENSIANS. "The question was discussed concerning whether, with the approval of two miracles following the granting of veneration by the Apostolic See, it could proceed to the solemn canonization of Blessed Leonard of Portu Mauritio." This was done in the general assembly of the 14th of October of the same year, in the buildings of the Vatican, where the Most Reverend Cardinal Ludovico Altieri, Bishop of Albano, and the Relator of the Cause, presented the question; and all those present, whether they were Consultors or Cardinals, unanimously gave an affirmative response. "However, the Most Holy Father expressed his serious concern in this most important matter; and He encouraged all those

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present to invoke the Divine Spirit, that He might guide Him to rightly judge and to lead Him to all truth." Finally, to increase the joy of this day, on which the wise Son honors the birthday of the Blessed Father with a crown of merits not unworthy, the Most Holy Father, after having piously offered the sacred Host in the innermost chapel of the Palace, went to the chapel dedicated to the Immaculate Conception of the Virgin and to Saint Francis of Assisi, which shines above all others in the Basilica of the Prince of the Apostles, because of the daily celebration of the Sacred Offices; and there, having summoned the Most Reverend Cardinal Constantino Patrizi, Bishop of Portu and of Santa Rufina, Prefect of the Congregation of Sacred Rites, together with the Most Reverend Cardinal Ludovico Altieri, Bishop of Albano, and the Relator of the Cause, along with the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and with them present, He decreed that it could proceed to the solemn canonization of Blessed Leonard of Portu Mauritio. This decree was to be published and referred to the Acts of the Congregation of Sacred Rites. And He ordered that Apostolic Letters, sealed with the leaden seal, concerning the solemnity of the canonization, should be issued in the Patriarchal Basilica of the Vatican, whenever it should be celebrated, on the fourth of the Kalends of October, 1836. C. The Bishop of Portu and S. Rufina. Cardinal Patrizi, Prefect of Sacred Rites. R. C. Acta, D. Rom. II, fasc. XFL. Bartolini, Secretary of Sacred Rites.

[*Latin ed. p. 242*]

21031AMA SEU AliEX . ET AQUEW. CANONIZATIONIS BEATI A PAULI CRUCE. FUNDATORIS CONGREGAT. CLERICORUM EXCALCEATORUM SANCTISSIMAE CRUCIS ET PASSIONIS DOMINI NOSTRI IESU CHRISTI SUPER An Tuto procedi possit ad DUBIO solemnem eiusdem Canonizationem ? Beati Pauli a Cruce DECRETUM — « Among those whom the Lord foreknew and predestined to be conformed to the image of His Son, Blessed Paul of the Cross rightly merits to be reckoned. He, while living on earth, imitating Christ, sought out the wandering sheep who had perished, bringing them back to the fold through arduous and difficult paths; he carried the wounds of Christ even in the Cross in his heart, so that he no longer lived for himself but for Christ, concealing his life in Christ, and happily departed this world, so that he might reign with Him in heaven, who had endured His passion on earth. But now, in these times, the enemies of the Cross of Christ have exerted all their strength to tear it away from the hearts of the faithful; therefore, Almighty God made this faithful servant shine forth with new miracles after the Apostle was honored with the highest honors by the Apostolic See. These miracles, having been brought before the Congregation of Sacred Rites for examination, were approved by our Most Holy Lord Pope Pius IX through a Decree issued on the first of September of the following year, in

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which it was declared that two miracles had occurred, brought about by God through the intercession of Blessed Paul of the Cross. » Therefore, in the cause of this most illustrious canonization, everything had proceeded so far that nothing remained except to raise the question in the same Congregation of Sacred Rites: Whether, with the approval of two miracles established and with the veneration granted by the Apostolic See, it is fitting to proceed to the solemn canonization of Blessed Paul of the Cross? And so, with this question raised, in the General Congregations held before our Most Holy Lord in the Apostolic Palace at the Vatican on the fourteenth of October of the same year, all those present, Consultors and Cardinals, unanimously gave their affirmative opinion. » Nevertheless, the Most Blessed Father did not wish to pronounce his final judgment immediately, but rather sought divine wisdom, so that, in resolving this very serious matter, He might have the favor of God. » Finally, on this day when the feast of Saint Francis of Assisi is celebrated, our Most Holy Lord, having first devotedly celebrated the divine mysteries in his private oratory, came to this patriarchal basilica, and in the chapel of the Immaculate Mother of God and Saint Francis, where he, Blessed Paul of the Cross, had been initiated into the priesthood by the Supreme Pontiff Benedict XIII, he summoned the Most Reverend Cardinal Constantino Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites, and Relator of the cause, along with...

[*Latin ed. p. 243*]

243 In ROMA, or ALEXANDRIA, the Most Reverend Father Peter Miuetti, Promoter of the Holy Faith, and I, the undersigned Secretary, and those present, decreed that it is possible to proceed with the solemn canonization of Blessed Paul of the Cross. "Furthermore, it was ordered that this decree be made public, that it be recorded in the acts of the Congregation of Sacred Rites, and that Apostolic Letters be issued under the seal, concerning the solemnities of the canonization, to be celebrated whenever desired in the same patriarchal Basilica of the Vatican. This was decreed on the fourth day before the Kalends of October, in the year 1766." His Eminence, the Bishop of Porto and Santa Rufina, Cardinal PATEMI, Prefect of the Sacred Congregation of Rites, and His Eminence, Monsignor Bartolini, Secretary of the Sacred Congregation of Rites.

CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, BENEDICT OF URBINO, PRIEST OF THE ORDER OF MINOR FRATI OF SAINT FRANCIS, CAPUCHIN.

Regarding the miracles, upon which, in this case, it must be established beyond doubt, that they occurred, and that they occurred in effect, concerning which we are deliberating:

DECREE.

"Our Lord Jesus Christ, who, though He existed in the form of God, did

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not consider it a thing to be grasped, but emptied Himself, taking the form of a servant, and being made in human likeness, the Venerable Benedict of Urbino, in the course of his life, sought to imitate Him. For, being wealthy and of noble birth, he considered these things as dung, and, choosing the most humble habit of Saint Francis, he found delight in acquiring humility and poverty among the Minor Brothers of Christ. Though free, he made Himself a servant of all, for He became a child among children, and made Himself contemptible to the world, that He might give instruction in the rudiments of faith to children, and might enlighten rustic and uneducated people: He also became infirm among the infirm, that He might help the infirm; He became all things to all men, that He might save all. Finally, weakened by a long illness and by evangelical labors, he arrived poor and naked at the embrace of Christ, that he might attain the crown of blessedness promised to the humble and the poor. But Almighty God, who had raised up this faithful and poor servant from the dung, that He might place him among the princes of His kingdom, willed that the glory of His grace should be made manifest to the faithful; and therefore, He caused the Venerable Benedict to shine forth with signs and wonders. Three of these were presented to the most serious examination of the Congregation of Sacred Rites, once, twice, and a third time; namely, in the preparatory meeting held in the house of the Most Reverend Cardinal Constantini Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, on the ninth day before the Kalends of March, in the year 1765; and then, in..."

[*Latin ed. p. 244*]

244 REGARDING THE PROPOSED CANONIZATION. At a meeting of the Preparatory Congregation of Cardinals, entrusted with safeguarding the sacred rites, held in the Apostolic Palace at the Vatican on the tenth day before the Kalends of March of the current year; and subsequently, at the General Congregation before the Most Holy Pope Pius IX in the same Apostolic Palace at the Vatican on the fourteenth day before the Kalends of October; where a proposed question was presented by the Most Reverend Cardinal, Relator of the Cause, namely, "Regarding which miracles there is evidence in this case, and concerning the effect of which we are deliberating?" The Consultors first, and then the Cardinals, gave their votes. However, the Most Blessed Father did not yet reveal his definitive judgment, for he wished to understand, through fervent prayers offered with a pure heart, what He should decide. Finally, during the annual solemn commemoration of the Poor Laws, the inheritance of which the Venerable Benedict sought to acquire in the lands, the Most Holy Pope, with the utmost devotion in his pontifical residence at the Vatican, offered the Eucharistic Sacrifice to this Basilica, which is dedicated to the Apostle Peter, the Principal of the Apostles, and renowned throughout the entire world, where, in the chapel

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of the Virgin Mary, conceived without original sin, and before the Patriarch of Assisi, He summoned the Reverend Cardinal Constantino Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, as well as the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and in their presence, declared: "It is established by divine intervention, through the Venerable Benedict of Urbino, that there are miracles; namely, the first, of the instantaneous and perfect healing of Joseph Fierrucci from acute ophthalmia, accompanied by leucoma; the second, of the instantaneous and perfect healing of Dominic Bargnoni from pulmonary phthisis, accompanied by a severe pneumorrhagia; the third, of the instantaneous and perfect healing of Laureta Volpi from chronic pharyngeal angina, with severe accompanying symptoms." "This decree, according to custom, was to be made public, and was recorded in the acts of the Congregation of Sacred Rites on the fourth day before the Kalends of October of the year 1866." C. Episcopus Portuensis et S. Rufinae Card. Patrizi, Prefect of the Sacred Rites. R. C. Bartolini, Secretary of the Sacred Rites.

[*Latin ed. p. 245*]

245 ALBI. December 14, 1857. The Bishop of Albi presented the following to the Sacred Congregation for Indulgences. In the archives of the metropolitan church of Albi, under the patronage and title of Saint Cecilia, Virgin and Martyr, is preserved the Instrument of the Visitation of this church and Chapter, made by the Most Reverend Monsignor Le Goux de la Berehère, Archbishop of Albi, dated at Albi on Wednesday, 1698, under the title concerning the state of the relics, in which it is written: "A silver arm, sealed with the insignia of the Most Eminent Cardinal Joan nis Geoffroy, is contained within, which includes a bone of the arm of Saint Cecilia, granted by Pope Paul PP. II, as appears from public documents by which it is authentically recorded. Next to the fingers of said silver arm, there is a small, round reliquary which contains a part of the maxilla of the same Saint. Another arm, however, much smaller, contains another relic of Saint Cecilia, which we have learned from the reliquary constructed to contain it, to be a part of the femur, and we have deemed it fitting to place it in a reliquary of a different form." The Church of Albi (and so the praised Prelate continued) has never doubted the truth of its treasure, and the arm of Saint Cecilia has been frequently shown to the faithful for veneration. Various trustworthy authors speak of the arm of Saint Cecilia given to the Church of Albi by the Supreme Pontiff Paul II. Thus, *Gallia Christiana*, volume I, page 33. Moreover, Father Dom Guéranger, who wrote an excellent work on the life of Saint Cecilia, a clear and eloquent writer, states on pages 235 and 236: "We cannot fail to mention the arm of Saint Cecilia, and the relics of the holy martyrs Tiburtius, Valerian, and Urban, given by Pope Paul PP. II in the year 1446 to John Geoffroy, Bishop

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of Albi, and placed by the same in his metropolitan church. All those relics, which we certainly do not wish to condemn in any way, are not relics..."

[*Latin ed. p. 246*]

(2, I, Albien.) Concerning Saint Cecilia, Virgin and Martyr: When, in the year 1599, the tomb was opened, the entire body was found, which Saint Paschal had buried beneath the altar of the Basilica of Trastevere. It should be noted, however, that the Church of Albien has never claimed to possess the entire arm of Saint Cecilia, but only one bone from the arm; therefore, it could certainly be said that, at the opening of the tomb in the year 1598, the body of Saint Cecilia was entire, even though, since the year 1446, one bone had been removed from the arm and given to the Most Reverend Cardinal John Geoffroy, as the historians testify, and also the Very Reverend Fathers Le Goux de la Berehère, who affirms, in an authentic document of the diocesan visitation, that he saw the insignia of Cardinal Geoffroy and read a document consigned by the Supreme Pontiff Paul II. Furthermore, a more recent edition of the *Lives of the Saints*, by the author Godescar, which mentions the excellent work of the Reverend Father Dom Gueranger, adds in volume 10, page 202: "In the year 1466, John Geoffroy, Cardinal and Bishop of Albien, obtained from Pope Paul II, for his church, under the patronage of Saint Cecilia, a bone from the arm, and a part of the jawbone of this Saint." With these things established, the Orator proposed a question: "Whether it is permissible, as before, to expose for the veneration of the faithful, the silver arm containing one bone from the arm of Saint Cecilia." The entire consultation was reduced to this summary. To find a way to resolve the proposed question, the Consultant deemed it necessary to preface certain critical and historical observations concerning the deposition, translation, discovery, and reposition of the body of Saint Cecilia. Anthony Bosius had written clearly about all of these things, who, in the year 1600, presented an account of the martyrdom of Saint Cecilia, drawn from manuscript codices of the Vatican Library, and compared with others preserved in the monastery of Saint Cecilia and in other churches of the city, and he wrote it to Cardinal Paul Sfondrato under this title: *A History of the Passion of the Blessed Cecilia, Valerian, Tiburtius, and Maximus, Martyrs; also, the Lives of Urban and Lucius, Pontiffs and Martyrs, and the Papal Letters concerning the discovery and translation of the bodies of these Saints*, all from the most ancient manuscript copies of the noble libraries of the city. (1) The Consultant, Reverend Father Anthony Angelini, S.J., was selected, among others.

[*Latin ed. p. 247*]

ENGLAND. 247. "By Anthony Sosio, J.M.D., diligently and accurately investigated, and now, for the first time, published. Added to this is an account of the recent discovery and re-deposition of the relics of these

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Saints under Pope Clement VIII, Paul Sfondrato, Sovereign Pontiff of the Holy Roman Church. By Cecilia, Priest, Cardinal, at Rome, at the press of Stephanus Paulinus, 1600. Whoever, therefore, has written after Bosius concerning Saint Cecilia, necessarily had this work before his eyes; and, as is fitting, a faithful examination and judgment of these acts can be made concerning the history of the body of Saint Cecilia, by the editors of the *Acta Sanctorum*, by Rainaldus, their interpreter and compiler, who inserted these acts into their works; Pancirolius, Piazza, Butler, have drawn historical information about Saint Cecilia from this source. The same work of Bosius, enriched with new monuments, was published again in 1722 by James Laderchio, Priest of the Oratory. Therefore, there is nothing lacking that should be desired concerning the historical truth of the matter, in elucidating the question proposed. From this source, the following is presented by the Consultant. Saint Cecilia suffered martyrdom in the year one hundred and thirty-second after the birth of Christ, under Pope Urban and Emperor Alexander Severus. Her body was buried by Saint Urban in the cemetery of Callistus, which was therefore afterwards called the cemetery of Saint Cecilia. From the acts of the martyrdom, the following is recorded: "Then Urban, the Pope, taking her body, buried it at night with the deacons among his own tombs and martyrs, where the holy confessors are placed." Bosius adds that in his time, the place where the body of the Saint was deposited was known and venerated by the faithful (1). William, Archbishop of Bourges, placed a marble tablet there in the year 1409, inscribed as follows: "Here, formerly, was buried the body of the Blessed Cecilia, Virgin and Martyr. This work was accomplished by the Most Reverend Father, the Lord Archbishop, in the year of Our Lord 1409." In the same place, a marble tablet was found bearing this inscription: "To the Holy Martyrs, Tiburtius, Balenanus, and Maximus, whose remains are here." The very place where Saint Cecilia was buried by Urban has been discovered, with ancient paintings, and is adjacent to a crypt, where many Roman Pontiffs of the third century formerly lay, in the most celebrated cemetery of Callistus, in the year 1554. See the excellent work recently written by the most distinguished man in archaeological matters, John Baptist De Rossi, Knight, *Roma Sotterranea*, Volume I, page 57 and following.

[*Latin ed. p. 248*]

248 ALBIEN. "Thus is the eighteenth day before the Kalends of May," which is kept in the church of Saint Cecilia, near the altar of the Confession. Therefore, the body of Saint Cecilia, which was falsely believed to have been stolen by King Aistulf of the Lombards during the siege of the city in the year 782, truly lay there from the year 232, hidden by Pope Urban, until the time of Saint Paschal I., who reigned from the year 827 to the year 834. This saintly Pope, divinely inspired, took care to find the aforementioned body, and the authentic account of this discovery is as follows:

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"For the manifestation of this revelation, having postponed all difficulties, we firmly and without ambiguity decreed that the body of the Venerable Virgin should be sought. And, with the help of God, and with His usual assistance, we hastened to the cemetery of Saint Sixtus, located outside the Appian Gate, as is narrated in the sacred accounts of her passion, where, among our colleagues, bishops, we found her: clothed in golden garments, with her venerable spouse (that is, Valerian). And there we also found the linen cloths, with which her most sacred blood had been wiped from the wounds that the torturer had cruelly inflicted upon her with a three-pronged instrument, rolled up at the feet of the blessed Virgin, and full of blood; and having handled all these things with reverence, we honorably brought the venerable body within the walls of the Roman city. For its desirable veneration, the title, which Christian devotion had dedicated to her holy name, and which, long ravaged by the ravages of antiquity, was almost in ruins, was, with the benevolent favor of God, restored by us from its foundations; and for the honor of the Almighty God, we placed the body of this Virgin, along with her most beloved spouse (that is, Valerian), and the martyrs Tiburtius and Maximus, as well as the Popes Urban and Lutjon, both under the sacred altar, dedicating them there." This is from Bosio and Laderckio in their work. Finally, Clement VIII, on November 22, 1599, ordered that the body of Saint Cecilia, which had been placed near the place where Paschal I had placed it, be again removed by Cardinal Paul Sfondrato, and placed in a silver urn under the main altar of the same church. Cardinal Caesar Baroni, chosen by Clement VIII, examined the body of the Saint; and the aforementioned Cardinal Sfondrato kept a piece of the garment and small fragments from the skull of the same Saint for himself. From this, it can be inferred that the body of Saint Cecilia was hidden in the cemetery from the year 232 until the year 821.

[*Latin ed. p. 249*]

Albien. 249, Callisti; from that time until the year 1589, the church of St. Cecilia remained under the protection of the *ara maxima*; hence, it was never removed from there. With these things established, he proposed to himself a question of the greatest importance: whether the relics of St. Cecilia had ever been extracted from her body. Indeed, a document worthy of the highest credibility existed on this matter. Hrabanus Maurus, Abbot of Fulda, and subsequently Archbishop of Mainz, a man distinguished for his sanctity and learning, who wrote many works, both in prose and in verse, and who lived until the year 856; in volume IV of his works, number iii, page 231, he states that he possesses the relics of St. Cecilia, St. Valerian, and St. Tiburtius, which he received as a gift in Rome and deposited near the altar of the church of Rathsestorph, and which he decorated in distinct urns with inscriptions, in which he says of these three martyrs: "Here rest the members of these." And after the praises of St. Cecilia, for having brought

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glory to Christ through Valerian and Tiburtius, he adds: "These three persons, coming from the city of Rome, were received by Hrabanus, O Christ, your servant. And desiring them to be his patrons, he adorned the tomb, he placed it, and he inscribed it." The same is confirmed by Rodulphus, who wrote the life of Hrabanus, whose words are these, number 48, page 17: "To this place (that is, Rathsestorph, in the diocese of Fulda), he brought the bones of the Blessed Cecilia, and of the martyrs and saints Tiburtius and Valerian, and he placed them in a stone sarcophagus behind the altar, the bones of each being separately enclosed in individual compartments, and above it, as was the custom, he prepared an upright wooden tomb, and also a silver inscription declaring the deeds of the event." What Laderchius thought about such relics is inferred from his words, which are: "Therefore, it is to be considered that, on the occasion of that earlier translation (namely, that made by Paschal I.), some part remained from the sacred remains of St. Cecilia and her companions, which Hrabanus subsequently obtained." However, from the fact that Rodulphus and Hrabanus mention bones and bodies, nothing contrary should be inferred, according to Laderchius, since these words, when taken in a broad sense, signify relics among the ancients. This is confirmed by authority.

[*Latin ed. p. 250*]

"250 ALBIEN. [Mention of saints: Paulinus of Nola, Gaudentius of Brescia, Gregory of Nazianzus.] "Laderchius observes, and rightly so, that the word 'ipsam' (i.e., 'this') refers to the remains or bones, or perhaps to them by another plural name. For antiquity was accustomed to consider even individual relics with such names."

"Furthermore, when the inscription on the silver tablet, placed there by Cardinal Sfrondato, reads: 'The body of the Virgin; the Most Holy Pope Clement placed it here, intact and unchanged,' it is clear that these words must be understood in a broad sense, since, as we have indicated, the aforementioned Cardinal himself retained a small fragment for himself. These principles should be kept in mind by the Consultor when interpreting ancient monuments, according to which the presence of the very relics, or even, according to the manner of speaking, the bodies of the Saints, is affirmed in many places. One thing remained for the Consultor, namely, to discuss the reasons which the Church of Albien presented concerning the relics of Saint Cecilia which it possessed. Therefore, after the Bishop had presented his account, and after the truth had been restored, he concluded in favor of the legal possession of the relics. For the constant tradition, which was supported by the solid foundation of the archives of the Church of Albien, was never interrupted. Moreover, in addition to the works cited in *Gallia Christiana*, volume 1, page 33, and in Godescard's *Lives of the Saints*, volume Q, page 202, there is the fact reported by Boiler in volume 9 of *Lives of the Saints*, that in the year 1707, with the consent of Cardinal

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De Bernis, the Archbishop of Albien, a small fragment from the bones of Saint Cecilia was given by the Most Reverend Bishop De Cerisi of Lombardy to the parish church of Aquimj in the diocese of Ebroicen. Therefore, there is no doubt that the Church of Albien remained in its rightful possession until our time. Furthermore, it was easy for the Consultor to refute the arguments presented in the aforementioned account. For, in addition to the fact that the authentic instrument from the Cathedral of Albien reads 'a small bone from the arm,' and not 'the entire arm,' which would be sufficient to dispel any doubt; the argument that Gueranger draws from the discovery of the body of Saint Cecilia in the year 1599, is easily refuted. For although the account of the discovery states that the entire body was found, everyone understands that this 'integrity' must be understood in a certain sense, not strictly, but according to the ecclesiastical custom..."

[*Latin ed. p. 251*]

ENGLAND. 251. A historical account, in which the entire body is said to remain, although notable relics have been extracted from it. Nor are there lacking examples from our own times. The bodies of the saints Philip Neri, Aloysius Gonzaga, and Blessed Thomas, Cardinal, among others, whom we venerated a few years ago, and of Blessed Paul of the Cross, although they are said to repose whole in the urns where they were first placed, we know that Clement VIII donated a rib of Saint Philip to the church of the Oratory in Naples; that Pius VII gave the head of Saint Aloysius to the Theatines; and that bones were extracted, with due propriety, from the body of Blessed Paul. Furthermore, Cardinal Sfondratus, who asserts in the aforementioned table that the entire body of Saint Cecilia remains, retained a fragment of her skull. Finally, it must be added that a medico-analytical examination of the body of Saint Cecilia was never carried out; but only a legal one, as Bosius mentions. The Consultor then considered it advisable to follow the rules which Benedict XIV proposed in these matters, and which he believed to be wonderfully helpful in our case (1). Therefore, having carefully and accurately considered these observations made by the Consultor, the following question was to be resolved: "Whether, as before, a silver arm containing a tooth and a piece of the arm of Saint Cecilia can be exposed for the veneration of the faithful."

The Supreme Pontiff Benedict XIV, in book IV, part II, chapter 24, "On the Identity of Relics," states: "To resolve such doubts, neither metaphysical nor physical evidence is required, but moral evidence, whether it is presented before the Ordinary or before the Sacred Congregation." Ibidem, n. 9. "It should also be added that if moral evidence is not sufficient to obtain proof of the identity of relics, it would be necessary for two witnesses, free from all exception, to testify that they have seen such a tooth, for example, taken from the body of a particular Blessed or Saint whom they know well, and that it was placed in such a place, from which they know that it has

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never been removed and could not have been moved at any time; but such proof is, of course, impossible, and to the extent that it would be admitted as necessary, it would destroy the identity of sacred relics."

Then he adds: "Furthermore, since moral evidence admits of more or less, greater proofs are undoubtedly necessary when it is a question of proving the identity of the bodies or relics of Saints in the Congregation of Sacred Rites, than when it is a question of proving the same before the Ordinary, since Apostolic approval is of greater importance than Episcopal approval." Finally, he warns that nothing further need be investigated when, in a judgment of the identity of relics, written or witnessed faith is taken into account: "Bishops must acquiesce when a written or witnessed faith is proven to them." These words will easily convince everyone that they satisfy the proposed question.

[*Latin ed. p. 252*]

252 RESOLUTION OF ALBI.— The Fathers, devoted to indulgences and sacred relics, after mature discussion of the matter on December 14, 1857, judged it fitting to respond affirmatively. From our COLLEGES: I. The antiquity and established traditions of churches are to be held in great esteem, as they testify to the authenticity of their relics. II. Therefore, it is not easily to be denied, nor to be put in doubt, the authenticity of these same relics, due to certain difficulties arising from elsewhere, which seem to oppose these traditions. For a long possession by tradition, and the resulting prescription, are not extinguished except by a peremptory exception (1). III. According to ecclesiastical language, the phrase or inscription "the body of Saint..." is also commonly understood to refer to a part of the body; just as the entire body of Saint... is sometimes said, even if some parts have been removed. (1) A peremptory exception would be, for example, if a tomb were discovered in Rome, in which the body of Saint Cecilia is venerated, and, after careful analysis, a bone of the arm were found that the church of Albi claims as its own. However, the Roman See does not proceed in such particular matters. Indeed, even if, due to this peremptory exception, it were shown that the relics of Albi are not those of Saint Cecilia, that is, of that illustrious Virgin about whom we are speaking, it would not necessarily follow that the possession of the church of Albi would be invalidated. Another Consultant, the Illustrious and Reverend Father Felix, highly versed in Christian archaeology, who also wrote his learned opinion on this matter, although he remained doubtful due to serious reasons on both sides, concluded that the possession of the church of Albi should not be invalidated. For, besides the hypothesis that Consultant P. Angelini made and illustrated, he presented the following, which may serve to explain similar difficulties that sometimes arise from the multiplication of relics of the same Saint. Since many bodies of saints of the same name have been discovered, and are still found in Roman crypts, it often hap-

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pens, as the learned Marangoni observes, that the same bodies of the same name, having been transferred to various regions, have been believed, due to less accurate knowledge of writings, to be those of some more celebrated Saint of the same name. Hence, for example, two heads of the same Saint, which is said to have also happened with Saint Cecilia. What is surprising if, after the illustrious martyr Cecilia, due to her fame and veneration, other girls were given the same name, and subsequently suffered martyrdom for Christ the Lord? The Consultant showed that this could also have happened in the matter under consideration, with conjectures that are not easily to be dismissed.

[*Latin ed. p. 253*]

253 APPENDIX VII. CONCERNING CHAPTER STATUTES. Angelus Lucidi presents this for the most recent confirmation. – The Bishops (which we, for the benefit of our readers, amend, as we mentioned previously in the preceding volume) regarding which, if they have learned that something has occurred contrary to the law, or the decrees of the Council of Trent, or pontifical constitutions, and have examined the matter, they should consult the Apostolic See, and await the remedies of the law. However, customs are only admitted if they are reasonable and honorable, and if they deviate from reason, or are contrary to the Breviary, or the Missal, or the rubrics of the Roman Pontifical, Ritual, and other liturgical books used by the clergy, the Bishops should examine them, and if they discover that they have usurped an undue influence, they should either correct them or, if necessary, abolish them entirely. – Here, it will be appropriate to illustrate the doctrine of the learned Author, which is scarcely, or not at all, touched upon by others. Thus, in the aforementioned passage, volume I, page 320 and following, he writes: "This chapter, in which Benedict XIII, in his Instruction concerning whether Chapters have constitutions, states that, by this method, the statutes themselves and the constitutions are established, so that they are those of the Church, and the origins, foundations, insignia, rights, customs, revenues, burdens, and duties of the Church are expressed in distinct chapters, and that nothing in them should contradict the ancient ones, if any exist, or the decrees of the Congregation, and the usage received, and the Council, which was held in Rome in 1725. Furthermore, under ecclesiastical interdict, they should completely abolish those that exceed the limits, but rather should establish those that are appropriate for the opportunity, and the necessities of the times, things, and places, for the increase of divine worship, and that which the Bishop should correct, or abolish, in his Chapter." The Author proposes this method. – With these things as a preface (thus he begins), the principal parts of the Bishops concerning the constitutions of the Chapters are as follows: it is fitting that the Chapters have constitutions, in accordance with the method stated by Benedict XIII

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in his Instruction concerning whether Chapters have constitutions, so that the statutes themselves and the constitutions are established; that is, the origins, foundations, insignia, rights, customs, revenues, burdens, and duties of the Church are expressed in distinct chapters, and that nothing in them should contradict the ancient ones, if any exist, or the decrees of the Congregation, and the usage received, and the Council, which was held in Rome in 1725. Furthermore, under ecclesiastical interdict, they should completely abolish those that exceed the limits, but rather should establish those that are appropriate for the opportunity, and the necessities of the times, things, and places, for the increase of divine worship.

[*Latin ed. p. 254*]

APPENDIX VII. Furthermore, having perceived the diligence with which the observances of a more sacred discipline are maintained, or having judged that the utility of the churches is to be preserved, [the Holy See] has entirely abolished, or reformed, certain things according to the decrees of the Holy Canons, so that, as stated in Valva, Serv. Chor. 24, November, the Roman Synod ordered that, if none existed, they should be established in the province of Alba, Pisa, 1838, and also that those to be drawn up should be prepared according to what is prescribed in the second and fifth chapters of this document, and that these should be extended to all chapters of the entire Catholic world. The Holy Father himself stated: "Concerning how and in what manner it is to be ordered that the chapters should draw up constitutions, so that they may conform to the laws: The answer is: Affirmative. The third chapter extends this to all Metropolitans, and within the Synod, the first new Bishop must approve them. Furthermore, the constitutions, which are entirely necessary for the aforementioned statutes to be publicly proclaimed by the suffragan churches, are to be observed with diligence in Alba and Pozzuoli. Moreover, the same Holy See has professed to observe the constant discipline in this matter, as argued by the Most Holy Clement X, who praised the similar arrangements that he himself had issued concerning the dioceses, as reported in the relations of the Synod of Benevento, whose Archbishop was the Most Reverend Benedict XIII, and ordered that they be observed according to his Apostolic Letters, for which reason, after having diligently inquired about and received the necessary information on this matter from the same council, he did not wish to refer it to any distinction between churches, whether they are subject to the Roman Council or not; indeed, even if they exist in foreign nations, if none are present, they are to be drawn up by the Bishop within a reasonable time, faithfully adhering to the decree of the Holy See, which, on February 26, 1842, §, after alleging the sanction of the Roman Synod, orders that all churches should amend and correct them if they are flawed. However, this work must be carried out according to the norms established in the

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decrees.

[*Latin ed. p. 255*]

APPENDIX: If the causes, having been brought before the Roman Council, are such that the same should be presented to the Bishop, so that he may assume his office, sometimes, after consulting with the Bishop, the Sacred Congregation may, outside of the regular order, approve and strengthen the matter, so that it may be pleasing to the ends proposed. But if it approves, it does not do so in plenary sessions, but, so to speak, in a private manner, and rarely, and only in very serious cases where those in authority are negligently conducting themselves beyond the established limits, the Sacred Congregation commands the Bishops to draw up constitutions themselves, through some of their Consultors, and to impose these constitutions upon the Chapters. Furthermore, it is customary for the Sacred Congregation to write to the Bishops, indicating what should be noted in this regard, as experience teaches. "From these things, having clearly placed before you what has just been stated, it is evident that it pertains to and is of concern to the Bishops: therefore, with regard to the statutes of the Chapters that exist in their dioceses, they should, by their own Episcopal authority, strengthen them; and so that the Apostolic See may also add its power, we decree that it is necessary for them to completely expound and confirm everything. "Among the many things presented to the Sacred Congregation, some have been found to be not entirely suitable, never so imperfect as to be incomplete, lacking, and unworthy of the purpose, and not at all conducive to the matter to be defined by Episcopal authority; therefore, we believe it is not useless if we briefly explain the disposition of the Roman Council in this matter. The Bishops are warned by this to consult in such cases, from which we believe that the Apostolic See can obtain remedies; therefore, we decree that this body of statutes, which appears more accurate and complete, should be presented. "Nevertheless, it is repeatedly the case that, even though presented, it does not entirely succeed, as if, either in the Chapters or in the statutes themselves, something is lacking. We seek to present the work to the Sacred Congregation, especially the constitutions of the Cathedral, so that the same may be known to Centumcellae, and its sanction confirmed. But this is done only under the auspices and guidance of the Most Reverend Cardinal Falza."

[*Latin ed. p. 256*]

APPENDIX VII. cappa, a man of civil and canonical affairs; Concerning the most learned [man], who served as Secretary to the Holy Congregation; Concerning the office of the President of the Secretariat; Concerning the Archivist who fulfilled the duties of the Gregorian Council; Concerning the office of the Rat and Prefect of both; Concerning the Prefect of the Signature (in Rome, from the Contadini Printing House, 1840); Therefore,

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all the more, concerning the office of the theologian; Concerning the office of the Punctator; whose primary duty is the care of souls; Concerning the Canon, the penitential Canon; for he employed men skilled in the sacred ceremonies; Concerning the Benefices, that is, the Mansionaries; concerning the ecclesiastical knowledge of those men, who afterwards held the highest honors and offices in the Roman Curia. Therefore, Centucelle presents these statutes on the first page, along with the norm and interpretation from the Council. This is followed by a Table of distributions, where it is specified, for each hour, the diversity of days in the Roman calendar, the origin of the church, Grado, and the Table of days subsequently acquired, and to each is assigned, according to the privileges granted by the Supreme Pontiff. Concerning the power with which the Master is bound; concerning the sacred functions of the Masses; concerning the solemnities; in which the Vespers are celebrated by the Reverend Father, Delegate; at that time, the Cenaculum is described. Following this are the chapters concerning the church of Centucelle, which was governed by a Cardinal; Concerning the Canons, their admission, and promotions; Concerning the service of the church, the celebration of the Mass; Concerning the conventual Mass; Concerning the revenues of the church, tithes, and vacancies; Concerning the divine offices, and the official who must administer the Canon, the penitential Canon; Concerning the anniversaries; Concerning the annual Mass of the oath; Concerning the hourly schedule; Concerning the functions to be performed by each official. At the end of these, concerning the office of the treasurer; concerning the office of the synod; concerning the Cardinal's decree of approval of the Falzacappa edition.

[*Latin ed. p. 257*]

257 APPENDIX VIII. CONCERNING THE PRACTICE OF THE APOSTOLIC PENITENTIARY REGARDING THE REMOVAL OF THE PUBLIC HONOUR IMPEDIMENT ARISING FROM VALID MARRIAGES. The practice of the Apostolic Datary differs somewhat from the practice of the Apostolic Penitentiary concerning dispensations granted for the removal of the public honour impediment arising from valid marriages. This difference lies in the fact that the Datary requires that it be declared in the petition that the marriage bonds have already been dissolved, either by death or by the consent of the parties, through which this impediment is created. This is the formula that the Datary uses: "The Most Holy Bishop, etc., to N. N., layman, and N. N., woman, of the diocese of N., petition that there exists between them an impediment of the first degree to public honour, and that this arises because the aforementioned woman previously contracted marriage bonds by words spoken in the future with the aforementioned Orator's brother, and that subsequently, with the common consent of the aforementioned woman and the aforementioned Orator's brother, the aforementioned woman

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was entirely released from the aforementioned marriage bonds by the same brother of the aforementioned Orator, without any further attention being given to the matter." Conversely, the Apostolic Penitentiary, in its letters granting the power to dispense, instructs that the dissolution of such marriage bonds must be effected by mutual consent, adding the following clause to its letters: "provided that the prior marriage bonds have been dissolved by mutual consent." However, this clause is often omitted by the Apostolic Penitentiary if the parties, despite the existence of such a public honour impediment, have contracted marriage, although it is invalid. To make the matter clearer with an example, let us consider the case: "Caia contracted valid marriage bonds with Livius, and then she contracted marriage with Titus, Livius's brother; since such a marriage is null due to the impediment known as public honour, both Caia and Titus request a dispensation from the Apostolic See so that they may validly contract marriage. In this case, if the aforementioned parties present their petitions to the Apostolic Penitentiary, the aforementioned clause is not included in the letters, the execution of which is entrusted to the Ordinary of the place." The same clause is also omitted in the faculties granted by the Apostolic Penitentiary to certain Bishops, by reason of the circumstances of the place and time, to dispense in certain cases. In this matter, the power to dispense is granted to the Bishops with these words: "to dispense from the impediment of public honour in marriages already contracted; so that those who have contracted marriage, which, due to the aforementioned impediment, is invalid, may validly contract marriage again, with renewed consent, before the Parish Priest and two witnesses." The addition or omission of this clause is easily understood by everyone: for the clauses are not added or omitted without reason. Therefore, in the former case, when the aforementioned clause is included, the power to dispense is granted to the Delegate under the condition that the prior marriage bonds have been dissolved. In the latter case, when the clause is not included, the power to dispense is granted without this condition.

[*Latin ed. p. 258*]

258 APPENDIX. It is stated that, in cases where a betrothal is dissolved by mutual consent, such dissolution is not required in order to obtain a valid dispensation. It is worthwhile to inquire briefly why the Holy Penitentiary does not order the Commissary, after a marriage has been contracted, to first fulfill the aforementioned condition. A man who, against the will of the other party, breaks off the betrothal and subsequently contracts marriage, violates the faith of the betrothal and is bound, at the very least, by the obligation to make amends for the damages caused to the betrayed party by his actions; but the matter becomes such that, although no marriage has been validly contracted, the prior betrothal's obligation becomes morally impossible to fulfill. This is easily understood from the

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following: the marriage which is consummated (as often happens) creates an impediment of affinity in the first degree, e.g., between the man who entered into the prior betrothal and the woman, the sister of the presumed wife. Such an impediment, which arises from an illicit union, according to the common opinion of theologians, renders the obligation arising from the betrothal ineffective. Although the guilty man is considered obligated to seek a dispensation regarding this impediment of affinity, in order to fulfill the obligation of the prior betrothal, nevertheless, according to the common opinion of theologians, such an obligation ceases if the man cannot fulfill the obligation without serious inconvenience and damage to himself, as Schmalzgrueber states in *Tit. de Spons.*, n. 212. Furthermore, in cases such as those we are discussing, the prior betrothal could not generally have effect without injury to one's own reputation, without great scandal, without damage to the offspring, often already conceived, and sometimes even born, if the man who is obligated were to abandon the presumed wife in order to marry her sister. These things suggest another consideration. What should be said if those who, due to an impediment of public decency, cannot contract marriage before the Church, nevertheless contract marriage before a civil magistrate (where the civil marriage is recognized among Catholics); would it be necessary to require the dissolution of the prior betrothal by mutual consent before a dispensation is granted due to the impediment of public decency? We also know that the Holy Penitentiary refrains from imposing such a condition. The reasons appear to be the same; indeed, a stronger reason is added: for before the civil law, such betrothed are considered true spouses, as if they had contracted an indissoluble marriage; therefore, the matter becomes such that the observance of the prior betrothal becomes morally impossible. What, likewise, should be said, e.g., if Titus entered into valid betrothal with Caia, and then, having abandoned Caia, contracts a civil marriage with any other woman, must the Ordinary compel Titus to marry Caia in the sight of the Church? Based on the reasons stated, it does not seem that the Ordinary can compel Titus; for Caia cannot compel her betrothed to fulfill a promise that cannot be effectively carried out, although she may, to the extent that it is legally permissible, demand compensation for damages. These things can also be confirmed from *Cap. Cum in tua de Spons.* and from what Sanchez teaches in *lib. I. de Sponsal.*, disp. 15, n. 3, and disp. 50, n. 6.

[*Latin ed. p. 259*]

250 FROM THE CONSISTORY ACTS. On October 29, 1866. Our Most Holy Lord Pope Pius IX held a Secret Consistory on the morning of October 29 in the Apostolic Buildings at Vatican, in which he expressed his desire to add to the catalogue of Saints, Blessed Paul of the Cross, Founder of the Congregation of Clerics of the Passion of Our Lord Jesus Christ, whom he had solemnly declared Blessed in the year 1853, in the month of May. Then,

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the Eminent and Reverend Cardinal Patrizi, Bishop of Porto and Santa Rufina, as Prefect of the Congregation of Holy Rites, was ordered to report on the cause of this Blessed, so that the Eminent and Reverend Cardinals might express their opinion on the matter. After he had done so, briefly expounding the life of this Apostolic man, his outstanding virtues, and the extraordinary charisms with which he had been abundantly endowed by God, and finally, a summary of the proceedings that had been carried out in the prosecution of this cause, the Supreme Pontiff asked the Eminent and Reverend Cardinals whether they thought it possible to proceed to the solemn canonization of this Blessed; and all of them, individually, answered with "Yes." Then, the Most Holy Father made known his intention to proceed to the solemn canonization of Blessed Paul of the Cross: and before this is done, he will arrange for other Consistories to be held on a date to be determined, in which he will explicitly ask and seek the opinion of not only the Eminent and Reverend Cardinals, but also of the Bishops to be convened, so that, in a matter of such importance for the Catholic Church, due deliberation may be exercised. THEN, HE PROPOSED AND DESIGNATED: The Cathedral Church of Spalato, in Dalmatia, for the translation of the relics of Bishop Marco Calogera from the Cathedral Church.

[*Latin ed. p. 260*]

200 FROM THE CONSISTORY ACTS. ONLY THEN DID THE FOLLOWING APPOINTMENTS BECOME PUBLIC, ANNOUNCED BY THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH AFTER THE LAST CONSISTORY. Thus, the Metropolitan Church of Armagh, in the province of Ulster, Ireland, was assigned to the Reverend formerly General Vicar and recently Capitular of the same City and Archdiocese. The Cathedral Churches of Hagulstaden and Newcastle, in England, were assigned to the Reverend James Chadwich, formerly Canon of the Cathedral Church of Beverlac. The Episcopal Church of Arkadiopolis, in the Parts of the Infidels, was assigned to the Reverend James Lynch, from the Congregation of the Mission, Rector of the Irish College in Paris, and Coadjutor Delegate with future succession to the Bishop John Gray of Hypsopolis, in the Parts of the Infidels, and Apostolic Vicar of the Western District of Scotland, Glasgow. The Episcopal Church of Bethsaida, in the Parts of the Infidels, was assigned to the Reverend Samuel Augustine Sheehy, of the Order of Saint Benedict, General Vicar of the City and Archdiocese of Sydney, and Auxiliary Delegate to the Archbishop John Polding, Archbishop of Sydney. In the same Consistory, besides the Address concerning the canonization of Saint Paul of the Cross, the Most Holy Father delivered two other Addresses, which were made public, and which we add here in

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their entirety.

[*Latin ed. p. 261*]

2G1 ADDRESS OF OUR MOST HOLY LORD POPE PIUS IX, GIVEN IN A SECRET CONSISTORY ON OCTOBER 29, 1866.

Venerable Brothers: "Not once, Venerable Brothers, have We, in Our letters made public, and in various addresses given in this most august assembly, deplored the grievous afflictions of our most holy religion in Italy, and the most serious injuries inflicted upon Us and the Apostolic See by the Piedmontese Government. And you yourselves easily understand how deeply We are afflicted day by day, as We see that same Government, with ever-increasing zeal, relentlessly attacking the Catholic Church, its salutary laws, and its sacred ministers. Alas! The Supreme Pontiff, and the most upright men of both the clergy, and other most honest Catholic citizens, without any regard for religion, justice, or even humanity itself, are daily subjected by that Government to ever more grievous vexations, either being exiled, or imprisoned, or condemned to forced residence, or treated in other unworthy ways. Dioceses are deprived of their pastors, causing great loss to souls; Virgins consecrated to God are expelled from their monasteries and reduced to beggary; the temples of God are violated; episcopal seminaries for the clergy are closed; the Christian education of the miserable youth is taken away, entrusted to teachers of error and iniquity, and the property of the Church is usurped and appropriated."

"But that same Government, completely disregarding ecclesiastical censures, and openly despising Our most just and those of the Venerable Brothers, the Holy Prelates of Italy, has..."

[*Latin ed. p. 262*]

2C2 ADDRESS. Having established laws contrary to the Catholic Church, and to its doctrine and rights, and therefore condemned by Us, he did not hesitate also to enact a law concerning what they call civil marriage, which is most harmful, not only to Catholic doctrine, but also to the good of civil society. For this law degrades the dignity and sanctity of the Sacrament of marriage, overturns its institution, and fosters the most shameful concubinage. For among the faithful, marriage cannot be, unless it is also a Sacrament; therefore, it is entirely within the power of the Church to determine all that pertains to the Sacrament of marriage. And furthermore, this same government openly harms the public profession of the Evangelical Councils, which has always flourished and will always flourish in the Church of God, and completely disregards the great benefits of the Regular Orders, which, founded by holy men and approved by the Apostolic See, have earned the highest merit for the Christian, civil, and literary republic through their glorious labors and pious and useful works. It did not hesitate to enact a law by which all Religious Families of both

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sexes are suppressed in all regions subject to it, and it appropriated to itself all their property and other goods belonging to the Church, and decreed their division. Before even setting foot in the Province of Venice, it did not hesitate to extend the same decrees and the same laws to those regions as well, and it decreed that the Convention begun by Us with Our most beloved son in Christ, Francis Joseph, Emperor of Austria, should be completely abolished there, and that it should have no force or validity against all laws and rights. Therefore, in accordance with the most serious duty of Our apostolic ministry, We raise Our voice again in this most noble assembly, for the sake of religion, for the Church, for its sacred laws, for the rights and authority of the Chair of Peter, and We vehemently complain of and condemn all and everything that, whether in these matters or in others pertaining to the Church and its rights, has been decreed, enacted, or attempted against the Church and its rights and laws by the Subalpine government and by any inferior magistrates. And We abolish these decrees and everything that follows from them with Our Apostolic authority, and We declare them to have been and to be of no force or value whatsoever.

[*Latin ed. p. 263*]

ALLOCUTION. 263 Those, however, who are the authors of these things, and who boast of the Christian name, ought to remember, and seriously consider, that they have fallen into the censures and spiritual penalties which the Apostolic Constitutions and the decrees of the Ecumenical Councils impose upon those who infringe upon the rights of the Church, by such actions. You know, Venerable Brothers, how certain cunning men object to, and perversely interpret, the Blessing which We granted to Italy, where, certainly not through Our own merits, but through the inscrutable judgment of God, We, having been brought to this Apostolic See, spontaneously emitted words of peace and reconciliation for the people under Our jurisdiction in the pontifical dominion. Indeed, We, deeply concerned for the true happiness and well-being of the entire flock of the Lord, then earnestly prayed to God, humbly and with great fervor, that He might deliver Italy from the evils that threatened it, and that the most precious gift of the Catholic faith might flourish even more in Italy, and that honesty of morals, justice, charity, and all Christian virtues might daily increase. And even now, We do not cease to offer fervent prayers to God, that He may mercifully deliver the people of Italy from so many and such calamities of every kind, by which they are miserably oppressed and afflicted through the actions of those who govern Italy, and through manifold persecution. Above all, We implore the most merciful Lord that He may assist and strengthen the same people of Italy with His heavenly help, so that they may remain steadfast and unwavering in their divine faith and religion, and may be able to bear and endure so many adversities and plainly grievous things with Christian fortitude. Those, therefore, who infer from this, and who ceaselessly strive,

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that We should, through the most blatant injustice, relinquish Our civil authority and the principate of this Apostolic See, which has already been unjustly taken away from Us in several provinces under Our jurisdiction, are deceived. Surely everyone sees how unjust and how harmful such a request is to the Church. By a singular counsel of Divine Providence, as We have already mentioned, it has come to pass that, after the Roman Empire was overthrown and divided into many kingdoms and diverse dominions, the Roman Pontiff holds a humble principate amidst such a variety of kingdoms, and in the present state of human society, so that he is subject to no civil authority, but enjoys complete freedom in exercising his supreme authority and jurisdiction over the entire Church, which was given to him by Christ.

[*Latin ed. p. 264*]

264 ADDRESS. Let him exercise the authority divinely conferred upon him; and let the faithful, with full awareness and confidence, obey the decrees, warnings, and commands of the Pontiff, and may they never, not even in the slightest degree, suspect that the actions of the Pontiff are in any way subject to the will and influence of any prince or civil power. Therefore, we cannot only refuse to renounce the civil authority, which has been established by the divine providence for the good of the universal Church, but we must also vigorously defend and protect all the rights of this civil authority, and we must vehemently denounce the sacrilegious usurpation of the provinces by the Holy See, as we have often done, and we denounce and protest it again and again on this occasion. Moreover, all acknowledge with what zeal the pastors of the Catholic world have defended our civil authority and the principate of this Apostolic See, both in words and in writing, and have declared that this principate is absolutely necessary in the present condition of worldly affairs, in order to safeguard and defend the freedom of the Roman Pontiff in the care of the entire Catholic flock, which is completely connected with the freedom of the entire Church. "And these people do not fear to say that we must return to Italy, that is, to reconcile with our enemies, who claim that they have made Italy their own. But how can we, who are established to defend the most holy religion, the salutary doctrine, and virtue, justice, and the salvation of all, ever agree with those who do not uphold the doctrine, and who turn away from the truth, and who flee from us, and who have not even wished to comply with our desires and demands, which were aimed at ensuring that all the dioceses in Italy would have their bishops to provide pastoral care and support? "Would that all those who so vehemently attack the Church, us, and the Holy Apostolic See, might one day turn their eyes and minds to truth and justice, and might repent, and, returning to themselves, and considering the good of their souls, be drawn to us with salutary repentance. Nothing could be more pleasing to us than to meet them in the manner of the Evangelical

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Father, and to embrace them with great joy, rejoicing that the dead have come to life."

[*Latin ed. p. 265*]

ADDRESS. 265 had perished, and were found. And thus it became clearly evident how fruitful our religion is in producing all virtues, and how it nourishes and protects them, and how it expels vices, contributing to the happiness of both individuals and of all society. For wherever religion itself, and the salutary doctrine of its Lord, are present, there it is necessary that honesty of morals, integrity, peace, justice, charity, and all virtues flourish; and the people are not afflicted by those most grievous evils by which they are so miserably oppressed, where that same religion and its doctrine are despised and trampled upon. "Indeed, from the most sorrowful events, hastily and painfully recounted, and from the most grievous daily occurrences in Italy, all can easily see and infer how greatly this Apostolic See is beset by dangers, and how it is exposed to the most bitter threats of rebellion, the hatred of the ungodly, and the malice of the enemies of the Cross of Christ. Furious voices resound from all sides, with which the most bitter enemies ceaselessly clamor, declaring that this city, Rome, must be involved in this most disastrous upheaval and rebellion in Italy, indeed, that it must be its head. But the God, rich in mercy, will scatter these impious designs and desires of men with His almighty power, and will never permit that this most beloved city to us, where He placed the Chair of Peter with the greatest, and indeed, unique benefit, which is the impregnable foundation of His divine faith and religion, should return to that calamitous state so graphically described by our most holy Predecessor, Pope Leo the Great (1), when the Blessed Prince of the Apostles first entered that very city, then the Mistress of the World." "Although, indeed, we are almost deprived of all human help, yet mindful of our duty, and completely trusting in the help of Almighty God, we are prepared, even at the risk of our own lives, to bravely defend the cause of the Church, which has been divinely entrusted to us by Christ the Lord, and, if it should be necessary, to go to that region, where, in a better way, we may be able to exercise our highest apostolic ministry." "But when a terrible storm arises, prayer is the one, and most powerful, refuge; therefore, we exhort all Venerable Brothers, all the Sacred Ministers of the entire Catholic world, to pray fervently." S. Leo, Sermon 82, also 80, on the Nativity of the Apostles Peter and Paul.

[*Latin ed. p. 266*]

266 ADDRESS. To the clergy, and to all the sons of the Holy Mother Church, who have never ceased to offer splendid testimonies of love and obedience towards Us, and who have always hastened to assist Us in Our most serious difficulties and those of this Holy See, We impart again and

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again the exhortation that they should always offer prayers and supplications to God with all faith, hope, and charity, so that the enemies of the Church may be vanquished, and that they may be brought back to the paths of salvation. "For, as the words of St. John Chrysostom say, prayers are a great weapon, a great security, a great treasure, a great harbor," a safe place, provided that we approach the Lord with sobriety and vigilance, with our minds collected, and with the entrance to the nest of our enemy [the devil] closed." In these times in which We are oppressed by labors, We certainly find considerable consolation in recognizing that God, when His Church is deprived of human assistance, works wonders that most clearly manifest His omnipotence, His divine right hand, and that plainly confirm that the gates of hell will never prevail against the Church, which, therefore, will always triumph over its enemies and remain steadfast until the consummation of the age. But it is a matter of the greatest sorrow that it is not certain that this nation, or that nation, will always preserve the most precious treasure of our divine faith and religion. Indeed, there exist many peoples who, formerly, faithfully guarded the deposit of the faith and the discipline of morals, but now, alas! they have been torn away from the rock upon which the building of the Church is founded, and separated from Him to whom power has been given to confirm brothers, and to feed lambs and sheep, and those who are divided among themselves, and who, blinded by the darkness of errors, are in the greatest danger of losing their salvation. And here We cannot but earnestly exhort all Supreme Princes, and other rulers of nations, in the Lord, that they may at length understand, and diligently consider, the most serious duty with which they are charged, namely, to take care that the love of religion and the worship of God may increase among the people, and to use all their power to prevent the light of faith from being extinguished in those same people. Woe to those rulers who, forgetting that they are ministers of God for good, neglect to do what they can and ought to do; and may they be greatly afraid and tremble when, by their very actions, they destroy the most precious treasure of the Catholic faith, without which it is impossible [to be saved]. (i) St. John Chrysostom, Homily 30 on Genesis, chapter 2.

[*Latin ed. p. 267*]

ADDRESS 207: To please God. For those approaching the most severe judgment before the tribunal of Christ will see how terrible it is to fall into the hands of the living God, and to experience His most severe justice. "Indeed, we cannot doubt that you, Venerable Brothers, witnesses and sharers of our labors, because of your outstanding and evident piety, and your singular devotion to the Catholic cause, together with us and the entire Church, will fervently join in prayer, and constantly implore the most merciful Father of mercies, that through the merits of His only-begotten Son, our Lord Jesus Christ, He may have mercy on Italy, and on all of

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Europe, and on the entire world, and that through His divine omnipotence, that the Church, having cast aside all errors, sorrows, and disturbances, may everywhere on earth enjoy complete freedom and peace, and that human society may be freed from so many evils by which it is afflicted, and that all peoples may come together in the unity of faith and the recognition of His Son, walking in the ways of the Lord, and flourishing in every good work."

[*Latin ed. p. 268*]

215. BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD AND FATHER, POPE PIUS IX, ADDRESS GIVEN ON THE XXIX DAY OF OCTOBER, MDCCCLXVI, IN CONSISTORY.

Venerable Brothers:

We are compelled, Venerable Brothers, with the deepest sorrow of mind, to lament the grievous and never sufficiently deplored state of the Catholic Church in the Kingdom of Poland and in the Russian Empire. You know well that, from the very beginning of Our pontificate, We have desired above all things to consult the interests of those afflicted in whom the most holy religion of ours is so distressed, and to promote the spiritual welfare of their faithful. Therefore, We have undertaken all measures, and We have even entered into a convention with the Most Serene and Most Potent Russian Emperor, and with the Illustrious King of Poland. But all Our efforts have been in vain. For not only has that convention been largely disregarded in its execution, and all those grave articles, which, according to promises, were to lead to the desired outcome, have been completely neglected, but moreover, the agreements and promises made by the Russian Emperors and the Kings of Poland themselves have been daily violated, and the war instigated by the Russian government against the Catholic religion has, in these most grievous times, been inflamed to such an extent as to threaten to utterly destroy the Catholic faith in those regions.

However, Our representations, made through Our Cardinal for public affairs to that government, have been of no avail, nor have Our Letters written to the Most Serene Prince (1). And here, We omit nothing in recounting (1) *Lit.* April 22, 1863.

[*Latin ed. p. 269*]

ADDRESS. 269 All those things which We have vehemently deplored in Our Encyclical Letter addressed to the venerable Brothers, the Prelates of the Ordinariate of Poland and of the Russian Empire, and which have been published in print (1), are continuing. For the aforementioned Government, with ever-increasing zeal, continues to harass the Catholic Church, preventing the Bishop of Chelm from receiving his episcopal consecration, which We granted him three years ago. Furthermore, after the Venerable Brother Sigismund, Archbishop of Warsaw, was exiled from his flock to

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distant lands, he was subjected to the most severe prohibition of all communication with the faithful of his Diocese. Moreover, Our beloved son Paul Rzewuski, that General Vicar and suffragan Bishop of Prusa, whom We appointed in the lands of the infidels, was seized by military force and exiled, never having been consecrated due to the obstacles presented by the aforementioned Government. And this occurred because the aforementioned Vicar was concerned with transmitting to other Ordinaries of Poland the Rescripts concerning ecclesiastical matters which We issued by Our own motion. Scarcely had the General Vicar been exiled when the Civil Governor of Warsaw did not hesitate to summon the Canons of the Metropolitan Temple of Warsaw, and to order them, without any delay, to elect a Vicariate General from among those he proposed. These unjust commands were rightly resisted by the aforementioned Canons, and to their credit, even though others were available who had been designated by the Archbishop of Warsaw to perform the duties of General Vicar, as unfortunately happened after the aforementioned beloved son Paul Rzewuski had been expelled. The Bishop of Vilna, moreover, has been forcibly removed from his Diocese and lives in exile, where he is unable in any way to exercise his episcopal duties and to provide good counsel to the flock entrusted to him. Furthermore, venerable Brothers, decrees have been promulgated by the aforementioned Government by which the Catholic Church, its authority, laws, and discipline are scorned. For by these decrees, almost all the monasteries of both sexes of the Religious Orders have been removed, and all the goods of each Religious Order have been assigned to the public treasury, and very few Religious Families that still exist have been removed from the governance of their Superiors and subjected to the jurisdiction of the Ordinaries.

(1) Encyclical Letter, dated July 30, 1854.

[*Latin ed. p. 270*]

270 ADDRESS. The Catholic clergy, both in Poland and in the Russian Empire, are being deprived of all their possessions, whether belonging to bishops, to collegiate chapters, to parishes, to ecclesiastical benefices, or to any other pious and religious institutions, and the revenues of these possessions are being entrusted to the administration of public funds. Furthermore, by these decrees, which are contrary to ecclesiastical laws, to the supreme authority of this Holy See, and to all rights, a new order for the Catholic clergy is being established, a new system for the existence of each diocese and collegiate chapter, a new division of parishes, and collegiate chapters are being abolished, and the authority and freedom of the bishops are being completely destroyed, since they are not permitted, without the consent of the government, to appoint any parish priest, any administrator of a parish, or any vicar. Moreover, by a decree of the same government, the Catholic diocese of Kamenets was suppressed, and its

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rightful pastor was joined to the administration of the dioceses of Luck and Zhitomir. Legitimate parish priests, especially in the dioceses of Sandomierz and Cracow, have been transferred from one parish to another at the discretion of the government, demoted from their proper rank, and others have been appointed in their place. Furthermore, the buildings of the seminary in the diocese of PÅ□ock were confiscated, and the bishop was forced to transfer the clerical students of that seminary to a former Franciscan monastery outside the city walls, and all ecclesiastical persons were forbidden to travel more than a thousand paces from their residence, and to communicate with each other. The communication of these faithful with this Apostolic See has been so severely prohibited and completely severed by the Russian government, that We, with the greatest sorrow, can no longer, in any way, exercise the supreme office of Our apostolic ministry to aid that beloved flock, and to provide it with spiritual assistance. And may it not be true that sad news has recently reached Us, namely that the Bishop of CheÅ□m and the majority of the canons of that cathedral have been exiled by the same government to unknown regions. We say nothing of the constant intrigues, machinations, and efforts by which the same government seeks to tear the children of the Catholic Church away from her bosom, and to drag them into the most grievous schism, nor of the imprisonments, exiles, and other punishments to which bishops and priests are subjected.

[*Latin ed. p. 271*]

ALLOCUTION. 27. "The ministers of the Church, religious men, and faithful Catholics who steadfastly adhere to their religion and defend the rights of the Church, are grievously subjected to persecution." All these things are made more evident by a careful exposition of all matters, which, supported by appropriate documents and published by the press, We have ordered to be presented to you first. And thus, the entire Catholic world will recognize how long the war waged by the Russian government against our most holy religion has been, so that it may be completely eradicated in the Kingdom of Poland and the Russian Empire. We are not unaware that, from the most grievous and utterly reprehensible rebellion, the same government has seized the opportunity to undertake such terrible measures against the Catholic Church, while the rebellion could have been restrained and punished in due measure, without inflicting such grave harm on the Church. And it would have pleased God, if no one, especially among the ministers of the Church, had become involved in the pernicious and fatal disturbances. We, indeed, condemn and reject the rebellion once again, as We have done before, and We warn and exhort all the faithful, and especially the clergy, to abhor, detest, and reject the impious principles of rebellion, and to be subject to, and obedient to, the higher authorities in all things that are not contrary to the laws of God and His holy Church." In

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this great sorrow, it brings Us no small consolation to see the extraordinary virtue and constancy of those Catholics who, although so severely afflicted, yet, with God's help, remain steadfast and unwavering in their profession of the Catholic religion, and who prefer to endure the most grievous sufferings rather than to depart from that most holy religion and from this Apostolic See." Meanwhile, zealously defending the cause of God, of His Church, and of Religion, which has been divinely entrusted to Us, and exercising Our authority with Apostolic freedom in this vast assembly of Yours, We raise Our voice and declare that all decrees and actions enacted by the Russian government to the detriment of religion, the Church, and the rights of this Apostolic See are most strongly condemned, rejected, and declared utterly null and void." We sincerely hope that the Most Serene and Most Powerful Russian Emperor, and the Illustrious King of Poland, will seriously con-

[*Latin ed. p. 272*]

272. "Considering that the Catholic religion, and its salutary doctrine, are the firmest foundation of Empires and Kingdoms, and also contribute greatly to the tranquility and happiness of peoples, We desire, for the sake of Our humanity and the loftiness of Our spirit, to assent to Our most just wishes and demands, and to effect, with Our supreme authority, that in the regions of Our vast Empire, the Catholic Church and its followers may find respite from so many calamities, and may attain the long-desired peace, and the free exercise of their religion. Let us not cease, Venerable Brothers, to pray with constant and fervent prayers to the God, rich in mercy, in humility and contrition of heart, that He may look favorably upon His inheritance, and arise to help His people, and that He may protect, aid, and defend the Catholic Church, so often buffeted by storms from all sides, so afflicted by dangers, and so beset by calamities, and may grant to it the most desired peace and triumph."

[*Latin ed. p. 273*]

273 LETTERS FROM THE REIGNING POPE OF ROME, IN WHICH HE CONGRATULATES CANONICAL FATHER GADUEL, GENERAL VICAR OF ORLEANS, BECAUSE THE SEED SOWN BY HIM, IN THE FORM OF A COMMENTARY ON THE LIFE AND WORKS OF THE VENERABLE BARTHOLOMEW HOLTZHAUSER, HAS FALLEN ON GOOD GROUND, AND PROMISES AMPLE INCREASE (*).

To the beloved son, Canonical Father Gaduel, General Vicar of Orleans.

PIUS.

P. P. IX.

"Beloved son, greetings and the Apostolic Blessing. We congratulate you,

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beloved son, that the seed sown by you, through the commentary on the life and works of the venerable Bartholomew Holtzhauser, has fallen on good ground, and that you already see many secular clergy joining together, according to his example, in common life (*).

Such a commentary, written in the French language by the esteemed General Vicar, presents the wise letter of the most illustrious Bishop Anthony Dupanloup, Bishop of Orleans, who highly commends the life of secular clergy living in common, according to the institution of the Servant of God Holtzhauser, and shows the abundant fruits that will result from it. This commentary, in verse, was immediately produced, and indeed in the best version, in the Italian language by the Illustrious and Reverend Canon Charles Candiani, who also added a learned preface to the same commentary, in which he shows how highly the life of secular clergy living in common society has been commended by the Saints. Useful notes have also been added as appropriate. It has also been translated into the German language. We also know that it has already been translated, or is being translated, into the English, Spanish, and Polish languages. And what is more, we know that in several dioceses, such a common life of clergy, according to the idea instituted by the Servant of God, has already been established, and is flourishing. Both the commentary on the life, and another volume, which contains the ecclesiastical works of the Servant of God, are available in Paris, at Ch. Douniol, bookseller, 29 rue Tournon. The Italian version, however, is available in Italy, in Monza, at the printing house of the Istituto dei Paolini, piazza di s. Agata N. 480."

(*) This refers to the anticipated positive outcomes and growth resulting from the publication and dissemination of the commentary on the life of Bartholomew Holtzhauser.

[*Latin ed. p. 274*]

274 LETTERS FROM THE REIGNING POPE OF ROME. [Concerning] the community of life. That utility which arose in the 17th century for the clergy, especially the German clergy, seems to promise no less fruit for our age; provided that the association of souls, fostered by common life, nourishes charity, and at the same time, conciliates the favor of God, who promised that He would be in the midst of those who are gathered together in His Name, and that He would speak to their hearts in solitude. The royal psalmist said that it is good and pleasant for brethren to dwell together in unity, and he compared the sweetness and efficacy of this to the oil upon the head of Aaron, which descended upon his beard and upon the hem of his garments; and to the dew upon the mountains of Hermon and Sion. For the clergy, detached from secular affairs and business, and united in the bond of the Holy Spirit, are anointed with spiritual grace, which, like the head, irrigates the intellect, and composes every aspect of life, and descends through the evangelical ministry to the faithful, and fertilizes

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their hearts like the morning dew. With regard to this, we not only find it approved, but also prescribed by the ancient laws of the Church, that priests, deacons, and subdeacons should eat and sleep together, and that they should have in common whatever belongs to them from the churches; and that they should strive above all to attain to the apostolic, that is, common life. Therefore, it happened that when the servant of God, through our predecessor, Pope Innocent X, requested the approval of his institute, Our Congregation of Bishops and Regular Canons, to whom the matter was entrusted, responded: "The institute of this community is pious and holy, and in accordance with the ancient canons of the Church, and does not require confirmation, since it proclaims that very thing which the clergy of the early Church practiced." Let them therefore go in peace, and may they bring forth in practice all blessings. However, Pope Innocent XI, wishing to add a new honor to the restoration of this useful ancient discipline, after the death of Bartholomew, confirmed the institute with apostolic authority in the year 1680, and writing about this to Leopold I, the Emperor who had requested that it be done, said: "The Institute of Clergy Living in Common, which was recommended to us by Your Majesty some years ago, has now been confirmed by us with apostolic authority; and it promises us such abundant fruits in the cultivation of the Lord's vineyard, that it deserves to be highly esteemed by all, and to be..."

[*Latin ed. p. 275*]

LETTERS FROM THE REIGNING POPE OF ROME. 275 all protected (1). And shortly thereafter, in another letter: "So great is the esteem we have for it, that we undoubtedly foresee a copious advancement for the Church of God, and for ourselves, a harvest of lasting joy (2)." We foster this hope, that these new societies of clerics living in community may be strengthened with the same spirit as Bartholomew. Therefore, we commend those who have already joined this way of life; and we always and abundantly foretell increases for these promising beginnings. To you, however, who have so well deserved from the clergy through your book, and to all those who, led by a desire for the greater good, have given and will give their names to these pious societies, we impart the Apostolic Blessing, a pledge of the highest heavenly graces and of our special benevolence (3)." Given in Rome, at St. Peter's, on the 17th of March, 1866, in the twentieth year of Our Pontificate. PIUS. P. P. IX.

(1) Which, in Latin, sounds like this: "The Institute of Clerics living in community, which was commended to Us by Your Majesty some years ago, has now been confirmed by Us with Apostolic authority: and indeed, it promises Us abundant fruits in the cultivation of the Lord's vineyard, so that we consider it a thing that all should cherish and foster."

(2) We, indeed, consider it so important, that we certainly hope for a copious provision from it for the Church of God, and for ourselves, a harvest

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of lasting joy.

(3) See Appendix X.

[*Latin ed. p. 276*]

276 EX S. CONCILIO, SUSPENSIONIS, IRREGULARITATIS, ET PRIVATIONIS PAROECIAE. Die 10 Decembris 1863, 30 Iulii 1864, 8 Iulii et 12 Augusti 1865. Sess. 21, cap. 6, de / t e / . Compendium facti. Anno 1847, paroecia, quae plus quam mille animarum numerabat, in dioecesi N. in Italia superiore, vacante, Titius, sacerdos indigenus, ei adhibitus est. Electio eius non placuit parochianis. Cum tempore, aversio incolarum omnem modum excessisse videtur. Hinc continuae et renovatae querelae, non solum ab parochianis, sed etiam ab authoritate laica, quia ipse gravibus et interminabilibus quaestionibus non solum familias, sed etiam officia publica cumularet. Episcopus, praesens, cognoscens, nullam aliam rationem se posse ad hoc malum prospicere (quamquam Titius, reus facinorum, non appareret), nisi temporariam saltem parochi remotionem, hortatus est. Sed cum hortationes in frustra essent caducae, denique decreto anno 1857, Titius ab officio parochi ad tempus remotus est, et illi interdixit officia parochialia, sive publica, sive privata, exercere, et iussit eum a paroecia recedere, donec, rebus in melius conversis, in pristinum statum res restituuntur. Titius eiusmodi decretum aegre tulit, et, reliquis omissis, libellum supplicem ad S. Congregationem porrexit, ut Episcopus veram remotionis causam S. C. panderet, ut S. C. succurreret detrimento et dedecori quod inde sibi proveniebat; quod si Episcopus illam ab administratione paroeciae suspensionem, et easdem inhibitiones, loco poenae se dedisse affirmaret, supplex postulabat institui regularem processum, ad normam ss. canonum. S. Congregatio die 27 Februarii 1858 Episcopo rescripsit, ut referat de causis inflictae suspensionis, transmissis documentis.

[*Latin ed. p. 277*]

SUSPENDED, IRREGULAR, AND PRIVATE PARISHES. 277 concerning those who act. The Bishop, obeying the mandates, compiled a series of actions in his own letters with the necessary documents, from which were extracted those things which I have only indicated; moreover, the Bishop added that the parish had revived in religious devotion and peace after Titius' removal, with all present giving thanks. Meanwhile, Titius, while these things were happening, had in no way submitted to the episcopal precepts, but rather, with his stubborn nature, had exacerbated the people's opinion against him. Finally, it was necessary to use secular authority to remove him from the parish, so that a parish vicar could suffice. After these and similar things were recounted by the Bishop, other letters were sent from Titius to the Sacred Congregation, which were answered on January 26, 1859, with these words: "Report," and it was notified to the Bishop

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to take steps, in the end, so that no further delays would occur, and to take the necessary measures to obtain a voluntary resignation. Therefore, with new letters sent by the Bishop, he accurately recounted the means by which Titius had been induced to voluntarily resign from the benefice, which again were rendered null and void, and he added, among other things, that the parishioners were so alienated from Titius that, in his judgment, reconciliation was in no way to be hoped for. Meanwhile, in other letters sent to the Sacred Congregation, Titius insisted on his immediate reinstatement in the parish ministry, to which the Sacred Congregation replied: "Report," and it ordered the Bishop to notify both this decree, and the other of January 26, 1859, to the parish priest, and to warn him to submit obediently to the episcopal prescriptions and those of the Holy See. What followed from this is contained in the subsequent episcopal decree of November 5, 1861, in which the praised Bishop imposed the penalty of suspension from divine duties against the reluctant parish priest: "Titius, in past times also," (these are the words of the decree) "in the administration of the parish entrusted to him, behaved in such a way that he aroused the animosity of almost everyone, and to such an extent that schisms arose, and all kinds of evils progressed in the parish, so that We were compelled to remove him from all parish office for a time." This is true, because (1) The words "Relatum," or "Lectum," signify that suppliant letters had been received or read without any effect, that is, rejected.

[*Latin ed. p. 278*]

278. REGULAR AND PRIVATE PARISHES. "We decreed on October 26, 1857, that we forbade him to remain in his parish, and to exercise, in any way, parochial duties, whether public or private... In the meantime, it was reported to Us that the aforementioned priest, without any permission from Us, and contrary to the decree of October 26, 1857, had again returned to the parish, where he was performing sacred rites and administering the sacrament of Penance to those seeking it. Then, through Our Pro-Vicar General..., we warned him not to give further cause for his condemnation by such flagrant disobedience. But, since he disregarded this warning, on February 9 of the current year, we made Our intentions clear to him in a new decree, declaring that he would be gravely tainted, who, still remaining in the parish against the episcopal mandate, and deprived of all jurisdiction, dared to administer the sacrament of Penance to the great scandal of the Christian people. Not long afterwards, on March 10, we issued a rescript from the Holy Council, in which, rejecting the pleas of Parochi (Titius), we ordered him to be warned to submit obediently to the prescriptions of the Bishop and the Holy See. We hoped that, he who had always resisted Our warnings and commands, would at least yield to the authority of the Holy See. But, alas, it seems that the situation has worsened. For, he, completely disregarding the new warnings, continued to reside in

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his parish, where he dared to celebrate Mass, hear confessions, and administer the Holy Eucharist to the people. And as if such disobedience were not enough, he himself, on September 16, in a letter addressed to Our Pro-Vicar, boldly confessed his disobedience, and with utter irreverence, sent it to Our court.

"Therefore, since we know of no other remedy to bring this contumacious priest to obedience and reason, or to deter him from his insolence and scandals, by these present letters, we suspend the aforementioned priest, the Paroch, from all ecclesiastical functions, and we wish him to be considered suspended from all such functions.

"Barely a month after the decree of this suspension, the Bishop reported more serious matters concerning Titius to the Holy Congregation. He reported that, according to sworn witnesses, Titius had repeatedly celebrated Mass, openly defying the suspension; and therefore, he inquired whether Titius..."

[*Latin ed. p. 279*]

SUSPENSIONS, IRREGULARITIES, AND PRIVATE BENEFICES. 279. It is possible for a priest to become irregular, and whether he should be deprived of his parochial benefice, and whether, in urgent necessity, the same benefice should be conferred upon another suitable priest. To these questions, a response was given on February 3, 1862: "The Sacred Congregation, adhering to resolutions previously issued in similar cases, declares that the parish priest has fallen into irregularity, and that there is no impediment to the Bishop declaring him irregular. However, with regard to his deposition from the parochial benefice, the Bishop should more carefully report all the circumstances pertaining to the aforementioned parish priest, transmitting authentic copies of the documents to those concerned."

Therefore, after the Bishop submitted reports, testimonies of numerous witnesses, notes and ordinances of the civil authority, and the confessions of the priest himself, the matter was debated in a plenary session of the Sacred Congregation, in due order of law, under the following doubts: I. "How and to what extent should episcopal decrees be upheld in this case?" II. "How and to what extent is there a basis for the deposition (of Titius) from the parish?" To these, the Sacred Congregation decided to respond on December 5, 1863, as follows: To I, affirmatively in all respects; to II, deferred, with the understanding that the Bishop should grant Titius a new term of two months to present his rights before the Sacred Congregation and to inform it of the results.

Therefore, within the prescribed term, Titius, in defense against the actions that the Bishop had sent to the Sacred Congregation, presented, among other things, the following: that the Bishop's reports were not entirely consistent with the truth; that he had been assigned to the present parish after having previously served another town, a transfer that had

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been made by the predecessor of the Bishop, only after ascertaining his suitability to govern the people of that town; that the aversion of the parishioners was to be attributed to the serious difficulties of that parish, and to the efforts of certain parties to have the present (incumbent) placed as vicarius in that parish, as if he were the parish priest. Furthermore, he stated that he had never been notified of the specific charges against him, and that he had demonstrated the best course of action, based on a letter from a former Bishop, and on the testimony of fourteen parishioners, who stated that the people of the parish not only abhorred the visiting priest, but indeed strongly desired that Titius be restored to his parish as soon as possible, which was deteriorating day by day due to his absence.

[*Latin ed. p. 280*]

280. SUSPENSIONES, IRREGULARIDADES, E PARÓQUIAS PRIVADAS. Titius, por otro lado, alegaba que el Obispo era de fácil credibilidad; que había escuchado las quejas del Vicario Foráneo, que le era sumamente odioso, y del Delegado provincial, que era un laico, sin discernimiento; y por lo tanto, se había esforzado constantemente por instituir un proceso formal, o al menos presentar los puntos individuales de las acusaciones; bajo la condición de que, solo entonces, él, el Obispo, le había indicado que voluntariamente renunciaría a la parroquia; pero como no había una justa causa para la persecución, ni la tranquilidad del pueblo, ni la salvación del párroco se veían amenazadas, por lo tanto, afirmaba que el Obispo, al decidir su exilio, le había dicho que su intención era restaurar al párroco y así extinguir el conflicto; pero alegaba que el Obispo no había dicho esto sinceramente, ya que, antes del decreto del 26 de octubre de 1857, el mismo Ordinario le había declarado verbalmente que el lugar de la mencionada parroquia ya no sería la patria de Titius. Además, Titius negaba otros puntos de las acusaciones, como aquel en el que se decía que él se había negado a habitar con el Vicario Parroco y cosas similares; y afirmaba que no había cometido ninguna falta por haber regresado a sus tierras nativas en contra de la prescripción del decreto; lo hizo por graves razones y necesidades. Por lo tanto, concluía que el decreto del 26 de octubre no tenía ninguna validez. Argumentaba que el otro decreto de suspensión fue emitido por una razón inválida, porque no había obedecido al decreto anterior; él mismo había apelado a la S. Congregación para la declaración de nulidad del primer decreto; y mientras la apelación estaba pendiente, y mientras se debía juzgar la validez del decreto anterior, se le impuso otro decreto de suspensión. Por lo tanto, concluía que, dado que los decretos eran nulos, la declaración de irregularidad también era inválida. Después de exponer abundantemente todo esto, Titius solicitaba que se mantuviera el juicio suspendido con respecto a los decretos mencionados; mientras tanto, se le concedía, por precaución, la absolución de las censuras y la dispensa de la irregularidad,

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y se llevaría a cabo un proceso regular, de lo cual, si resultara alguna culpabilidad, estaría más que dispuesto a renunciar a su cargo y beneficio. Por lo tanto, la causa nuevamente descendió a la S. Congregación para ser discutida bajo las siguientes dudas: I. "¿Se debe mantener o rechazar la primera duda en este caso?" II. "¿Es y cómo es válido el testimonio del sacerdote (Titius) en este caso?" III. "¿Es y cómo es válido conceder la absolución de las censuras y las dispensas de la irregularidad en este caso?"

[*Latin ed. p. 281*]

SUSPENSIONS, IRREGULAR, AND PRIVATE PARISHES. 28 f » case. » The case was discussed again on July 30, 1864. The Sacred Congregation decided to respond as follows: Regarding I, according to the previous decisions; Regarding II, postponed; And regarding the opinion: postponed, and to ascertain the true signs of restitution. The Bishop, consistently adhering to the opinion of the Sacred Congregation, which had been made known to him, responded: that Titus had been ordained with the title of ecclesiastical chaplain, and that he reported the annual income he received; he stated that the annual income from the parish in question was provided to the Parish Priest; that there were very few benefices in his diocese that were freely conferred by the Bishop, and that none were currently vacant. Meanwhile, Titus appeared to have made certain promises of submission to the Bishop; and at the same time, he requested that the Sacred Congregation completely absolve him from the burden of these decrees, through a regular process.

WHAT WAS BEING ARGUED IN FAVOR OF THE PARISH PRIEST. — It was implied that it was established by law that no one should be deprived of a parish, unless for the cause of a crime, and that the crime must be one that is expressly stated in the law, according to the Council of Trent, Session 21, Chapter 6 on Reforms. Indeed, such a coercive removal is a very serious punishment, by which, according to the sacred canons, a cleric cannot be punished unless after a very serious crime, after warnings have been given, and after a formal process has been completed, and he has been convicted by a solemn and just judgment. And according to this most salutary provision of the law, the Sacred Congregation consistently responded that, where a crime had not been clearly proven, or where the form of the sacred canons had been neglected, there was no basis for the deprivation of a parish. However, in the present case, it was a matter of a Parish Priest who had been removed from the parish, without any formal process, and completely neglecting the form prescribed by law; indeed, it was a matter of a Parish Priest against whom, according to the Bishop himself, no crime existed. If, after the Bishop's decree, events should occur that resemble the quality of a crime, in such a case, he would appear to deserve compassion rather than punishment. The removal from the parish and from his own

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homeland, even if temporary, which put Titus's reputation in jeopardy, compelled him to invoke either a regular process or reinstatement in office; this invocation, however, ceased when...

[*Latin ed. p. 282*]

282. SUSPENSIONS. IRREGULAR AND PRIVATE BENEFICES. It seemed that, rather than malice, the actions which had been persistently undertaken against the decree were to be attributed to a disturbance of the spirit. It was not considered necessary to resort to refuge to sustain the removal, due to the grave aversion with which the parishioners were said to almost universally express towards the parish priest. Since any crime was neither demonstrated nor present, the people's aversion arose without any fault of the parish priest; in such a case, the parish priest was said to be unable to resign the benefice; indeed, for such a reason, a resignation offered spontaneously is not easily accepted by the Superior, as stated in Chapter 10 of the Resignations, by St. Pius V, in the Constitution *Quanta Ecclesiae...*, dated April 1, 1568, in which the Holy Father decreed that one may resign a benefice, but added that those who, due to grave enmities, cannot or do not dare to reside safely in the place of the benefice, are nevertheless: "But none of these shall be released from the sacred order, unless they are able in every way to resign a benefice or ecclesiastical office, if they have some other means by which they may be conveniently sustained in life." This Constitution is illustrated by Barbosa in *De Officiis et Potestatibus Episcoporum*, allegation 69.

THOSE WHICH DEPENDED ON THE FAVOR OF THE BISHOP. On the contrary, it was noted that, although Titius had given no reason for the people's hatred; although he was not guilty of any crime, nevertheless, the Bishop had properly performed his duty. For it is known that a parish priest must be removed from the administration of a parish if he is hated by the people, lest a most serious detriment be inflicted upon the entire flock because of the good shepherd. However, if the aversion and hatred of the aroused people are not justified, the parish priest is not to be punished, that is, the parish is not to be deprived of him as if he were a condemned criminal; but he must nevertheless be removed through some change of benefice, as has been done in similar cases, as in Eystetten. The change of parish occurred on September 22, 1742. In this case, however, there was no observation of defects in the formalities of the law, nor of a formal defect in the process, since the matter concerned not the imposition of a penalty, but the simple remedy to be given to those who have been scandalized, and to the dangers of enmity. Although no serious crimes were imputed to Titius in the matter, he was not entirely innocent. For he had, at least, provided an opportunity for the people's agitation through his imprudent manner

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of acting, nor did he heed the Bishop's admonitions and exhortations.

[*Latin ed. p. 283*]

SUSPENDED, IRREGULAR, AND PRIVATE BENEFICES. 288. [They] produced nothing. Therefore, there were not sufficient reasons for which the Bishop, who is placed over the entire diocese for its good, had issued a decree of temporary removal, as a prudent remedy. Nor was the subsequent decree of removal to be considered invalid, which was provoked by the flagrant contumacy and arrogance of Titus, who, without any reason, and to the scandal of the people, did not submit to the episcopal prescriptions and those of the Holy See; and finally, having violated his suspension, he fell into irregularity. These and other points were to be determined on the 19th of [the month]. I. "Whether one should adhere to, or depart from, the decisions made in the first [hearing] in this case." II. "Whether and how there is a place for the deposition of the Priest (Titus) in this case." III. "Whether and how there is a place for absolution from censures and dispensation from irregularity in this case." RESOLUTION. – The Holy Congregation, having reviewed the case on August 12, 1865, decided: Regarding I, and further. Regarding II, there is a place for the appointment of an administrator of the parish, in spiritual and temporal matters, assigned with the favor of the Priest (Titus), until provision is made for his ecclesiastical benefit, with a pension of 400 livres. Regarding III, after having completed ten days of spiritual exercises in a religious house designated by the Bishop, there is a place for absolution from censures and dispensation from irregularity. FROM THE ABOVE, ONE MAY GATHER: I. That, when it is a matter of a parish priest who is not removable, and who is placed over the parish according to the norms of the canons, he can be removed from the parish either by deprivation, or by a simple economic removal, which can be either perpetual, or for a time. II. That the deprivation of a parish cannot be carried out unless it is established that there are absolutely grave faults, for which this most serious penalty of deprivation is imposed by law, with the judicial order strictly observed, which is prescribed in these cases.

[*Latin ed. p. 284*]

284. SUSPENSION. REGULATION AND PRIVATE MATTERS. III. An economic removal [of a parish priest] occurs for a twofold reason: either because the parish priest lacks the skill and suitability to properly govern the parish (I), or because of a grave aversion and antipathy of the people, in which case the parish priest cannot properly serve his parish. V. In the case of a temporary economic removal of a parish priest, provision must be made for the needs of the parish through an administrator, or a suitable vicar who will perform the duties of the parish priest, and to whom a proportionate share of the revenues is assigned. VI. In the case of a permanent economic removal, provision must be made for the parish priest by the as-

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signment of another benefice (2). VII. In the present case, a grave aversion of the parishioners has occurred, and at least a relative unsuitability of the parish priest for the present governance of the parish. VIII. Furthermore, it must be understood that the Bishop's inhibitory decrees are not to be confused with decrees of formal suspension (3). (1) The Sacred Council of Trent, Session 21, Chapter 6, concerning the reform of the Church, decreed: "Because learned and skilled pastors are most fitting for the administration of parish churches... Bishops, even as delegates of the Apostolic See, may appoint coadjutors or vicars for a time to such unlearned and unskilled individuals, if they lead honest lives, and may assign them a portion of the fruits [of the benefice] for their sufficient sustenance, or otherwise provide for them, with whatever title and exemption." (2) See a similar case in Volume I, page 513, from which the aforementioned principles are confirmed. (3) In the present case, it has been clearly distinguished that the first decree was one of inhibition, and the second decree was of formal suspension. Here is another recent example of this distinction. In a case of suspension brought before the Sacred Congregation [of the Holy See] on December 17, 1864, the Bishop, because of a certain imprudent action of a parish priest, ordered him to go to a religious house to perform spiritual exercises, for a period until a new order from the Bishop. Meanwhile, the Bishop added that if the parish priest disobeyed, he would, at that very moment, be suspended from his divine office. The parish priest immediately obeyed, but after ten days of exercises, with permission granted by his superior, and with a good testimony of the exercises properly performed and completed, he presented himself to the episcopal curia. Upon learning of this, the Bishop forbade the parish priest to presume to perform any pastoral office within the district of the parish. Although such a decree was repeatedly called a "suspension" by both the Bishop and the parish priest, the case was ultimately heard before the Sacred Congregation under the following questions: I. "Can" a suspension be maintained in this case? II. "Can" and how can the removal from the parish be maintained, or rather, is there a place for reintegration, restitution of fruits, and compensation for damages in this case? The Sacred Congregation responded: "To I and II, the inhibition can no longer be maintained, and therefore the parish priest must be reintegrated." Indeed, the Sacred Congregation called the Bishop's decree not a "suspension" but an "inhibition."

[*Latin ed. p. 285*]

285. OF PAROCHIAL RESIDENCES AND RIGHTS. On November 26, 1864, and June 10, 1865, in Session 23, chapter 1, of the *Compendium* of Decrees. The matter: Within the boundaries of the diocese of N., there are found two rural parishes united together, which are governed by one pastor. One of these is located in the village of A., under the invocation of Saint Sabinus; the other is located in the neighboring district of B., under

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the invocation of Saint Hercules. It had been the custom that the pastor would alternately perform his duties in one church and then in the other; however, he resided in the parish of Saint Sabinus, where the parochial house was more suitable, for the one in the other district appeared to be rather a small house, or even a dilapidated shack. But recently, the pastor built a house on the property of his family in the district of B, and began to reside there, which greatly displeased the inhabitants of the village of A. They presented a petition to the Sacred Congregation of the Council, in which they stated that four hundred years ago, their parish of Saint Sabinus had been united with the parish of Saint Hercules, and that in the decree of union, it had been declared that the church of Saint Sabinus would be the mother church, and the church of Saint Hercules would be a chapel dependent upon it; that the pastor had now abandoned the parochial house of the mother church, where the pastors had always resided; and they requested that he be compelled to return to his own residence, especially because they feared that they would lose their rights, and be deprived of the spiritual benefits that the parochial residence brings with it. They also stated that during that same year, they had been deprived of several pious practices, such as triduum and novena devotions, and other sacred functions that had previously been held. Furthermore, since there was a Confraternity of the Most Holy Sacrament in the same church of Saint Sabinus, the parishioners were also upset that the pastor had transferred the chalice, the ostensorium, the image of the Crucifix, and other items belonging to the Confraternity to the other church of Saint Hercules. Finally, they complained that previously there had been three keys to the archives, two of which were held by the Syndics, and one by the pastor; but now there was only one key, which the pastor alone possessed. Upon receiving such a petition, the capitular Vicar was asked to report on this matter; he reported that the decree of union...

[*Latin ed. p. 286*]

286 CONCERNING PAROCHIAL RESIDENCES AND JURISDICTIONS. Although diligent inquiry had been made, it had not been possible to ascertain the precise details; for the matter concerned an ancient situation that may have been obscured by the passage of time. However, in the archives, there were records of a Visitation conducted in the year 1573 by the Apostolic Visitator of that time, from which the esteemed Chapter Vicar deduced that the parishes in question had, in ancient times, been exempt from episcopal jurisdiction and subject to the Abbot for the time being of the monastery of N. N., to whom the collation of the parishes belonged; at that time, namely in the year 1573, the aforementioned parishes had already existed for a long time, and the church of St. Herculanus had, in antiquity, surpassed the church of St. Sabinus in terms of age, revenue, and the number of families. Furthermore,

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the Vicar observed that it could not be said that the church of St. Sabinus, and its dependent chapel, lacked all the characteristics that are proper to a mother church; indeed, considering the antiquity, the church of St. Herculanus appeared rather to be the one that should be considered the mother church. Nevertheless, he considered both churches to be of the same condition, and that neither should be considered superior to the other. He did not deny that the church of St. Herculanus was a dependent chapel; however, he considered that this should be understood in the sense that, in ancient times, both parishes were chapels dependent on the aforementioned monastery; and it is not surprising that, after being separated from the mother church, one of these chapels retained the name of a dependent church. Moreover, he noted that, in the aforementioned year 1573, there appeared to be some question regarding the parochial residence, so that the Apostolic Visitator expressed the opinion that it was not improbable that the pastor might reside in one of them, given the revenue of one church (St. Sabinus) and the antiquity of the other (St. Herculanus). In several decrees of the Bishops, however, both churches were mentioned together, or as being united with each other, or as being of equal standing. It was stated that the Masses and other sacred functions were celebrated alternately in each church, so that the equality of the two churches would be preserved. Therefore, the Chapter Vicar concluded that the matter concerned a union of parishes, which in law is called an equal union, the effect of which is that each church retains its own rights and privileges, and that the pastor cannot be prevented from residing in one parish rather than the other. Regarding the sacred functions of which the parishioners of the church of St. Sabinus complained, the Vicar observed that if any omissions had occurred, they should be attributed to the pastor's ill health.

[*Latin ed. p. 287*]

RESIDENCES AND PAROCHIAL RIGHTS. 287. Furthermore, due to the distance and the difficulty of travel, since the bridge over the river, which divides the parishes, had long since collapsed, and its ruins prevented, especially during the winter, the parish priest from crossing to the church of Saint Sabinus because of the abundance of water. Regarding the sacred utensils of the Confraternity, it was observed that, according to a diploma issued by the Archsodality of the Most Holy Sacrament above Minerva, on the aforementioned date of 1776, the aforementioned Confraternity was established for the common good and benefit of the parishes, and that the words of the same diploma seemed to apply to both parishes. In addition to these, it was noted that the parish of Saint Sabinus consisted of 191 individuals, while the other, of Saint Herculanus, consisted of 241. Furthermore, having received warnings from those involved, so that they might present their claims regarding their rights before the Holy Congregation,

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the parishioners of Saint Sabinus presented a decree from the year 1718, in which it was stipulated that the pastor should celebrate alternately in the two churches, except for the more solemn feasts, on which days he should celebrate Mass in the church of Saint Sabinus. They also presented a testimony from the predecessor of the aforementioned parish priest, who affirmed that he had read the oldest record preserved in the parish register, in which the church of Saint Sabinus was described as the principal and mother church of the other. And they presented other documents to confirm what they had stated in their petition. On the other hand, the parish priest considered that nothing should be presented. The question, with three distinct doubts, was presented before the Sacred Congregation of Councils on November 26, 1864, and the resolution was postponed, so that certain facts might be more accurately defined. Therefore, the Vicar Capitular was again requested to provide the following information: 1° What was the distance between the house built by the parish priest and the church of Saint Herculanus? And also, between the aforementioned house and the church of Saint Sabinus? And also, what was the distance between the two churches themselves? 2° That he should invite the people of Saint Sabinus to present a document supporting the claim of union. 3° Whether an ancient record truly existed in the parish archive regarding the primacy of the church of Saint Sabinus. 4° Whether two Masses were celebrated daily for the people, or only one, and where was the book in which these celebrations were recorded? 5° Whether a baptismal font existed in both churches. 6° Whether the predecessor parish priests had continuously resided in the parish house of Saint Sabinus, and what were the total annual revenues of the parish.

[*Latin ed. p. 288*]

"288 OF PAROCHIAL RESIDENCES AND RIGHTS. After the Vicar provided the Congregation with a topographical description, it was determined that the rectory was located 310 linear meters and 165 meters directly from the church of St. Herculanus; 1300 linear meters from the church of St. Sabinus; and that both churches were located 1610 linear meters apart from each other at the given point. He reported that, following new investigations concerning the decree of union, nothing further had been discovered beyond what was indicated in the records of the visitations, from which it was sufficiently evident that the aforementioned churches were joined by no bond other than the identity of the pastor, with all other distinctions being set aside. Regarding the remaining matters, he inquired whether one Mass was customarily celebrated alternately in each church; that there was no baptismal font in either church, nor had there been any record of one ever having existed in either church; and that the previous pastors had consistently resided in the rectory of the church of St. Sabinus. Following this, he presented a summary of the revenues

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of each church, which were meager. SYNOPTIC DISCUSSION: WHAT WAS DISCUSSED REGARDING THE FIRST QUESTION. – The solution to the first question depended largely on the nature of the union under which the parishes had been joined. Therefore, according to canonical jurisprudence, it was observed that there are three types of union, namely: the first, in which two churches are joined into one body, so that the rights, prerogatives, and privileges of each are mingled with one another, as it were, through a process of equalization and attribution, whereby what is proper to one church is attributed to the other, as stated in the Glossary, in cap. Novit, Ne sed. vae, and where the Doctors dispute with Piton, eccl. 9, n. 3 and 46. The second type of union is that which is called accessory or subjective; when, namely, an inferior church is subjected to and incorporated into a superior church, and in this case, such a church, being united, loses its own prerogatives and acquires those that are found in the principal church to which it is united, and adheres to it as an accessory to the principal, like a member to its head, as Fagnanus states in the aforementioned cap. Novit, Ne sed. vacan., n. 2, and Piton, loc. cit., and others. The third type of union is that which is called equally principal; when two or more churches are joined together in such a way that neither is subject to the other."

[*Latin ed. p. 289*]

RESIDENCES AND PAROCHIAL RIGHTS. 281) be subjected, or acquire the rights and privileges of another; but each remains in its original state, and is rather said to be united by reason of the person, since there is one Rector who presides over them, as the cited Authors teach. Furthermore, from what has been presented, it seemed to have been sufficiently demonstrated that the third species of union involves presence; in this species of union, which is also called principal, it is taught that the Parish Priest can reside, at his discretion, in one parish or the other, provided that, if one church is more distinguished than the other, he must reside in the more distinguished one, or if one church is not more distinguished than the other, but is more frequented by the people, he must likewise reside in the one that is more frequented, as taught by Nicol. de Beneficiis, p. 3, c. 2, n. 179; Barbosa de officio et potestate Parochi, p. 1, c. 8, nn. 9, 10; H. Fagnanus, in cap. Extirpandae, §; and those who treat of Prebends, nn. 31 and 32. In the present case, however, it did not appear that one church was superior to the other, either in dignity or in the frequency of the people (1). But if, in the present case, the Parish Priest were judged to be able to reside, at his discretion, in one parish or the other, it would remain to be inquired whether the same Parish Priest could reside in a house that he built within the parish of Herculaneum. There are not lacking Doctors who teach that, although a parochial church has a house, the Parish Priest can reside in the house of his parents or relatives within the limits of the parish, provided

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that he is able to administer the sacraments and to provide for the needs of the people, as Possevin. de officio Curati, c. 1, n. 7; Barbosa de potestate Parochi, p. 1, c. 8, n. 37, teach. But such an opinion is rejected by many Doctors, who affirm that this obligation of residence is so strict that the Parish Priest must reside entirely in the parochial house, as Clericatus par. 1 de Beneficiis, disc. 50, per tot., teaches; Barbosa de officio et potestate Ep., p. 3, alleg. 53, n. 7; Garcia de Beneficiis, p. 3, n. 179; Pignatell., tom. 7, cons. An. 16; Giraldi animadversiones ad Barb. de officio et potestate Parochi, p. 1, c. 8, m. 34 et seq. This, however, was also the opinion of the Holy Congregation, as shown by the following resolutions. In the case of Pomis Curvi Re(l) One church being superior to another, the church of Herculaneum would be a simple parish, and the effect of residence would be that the Parish Priest would reside in the more distinguished parochial church. Also, the title of unity would be held, e.g., if one church were archpriestal, as the church of Sabini; and if the difference in frequency of the people were very considerable, the one that was more frequented would be the one in which the Parish Priest would reside. Acta, tom. II, fase. XVII, 19.

[*Latin ed. p. 290*]

290. CONCERNING RESIDENCES AND PAROCHIAL RIGHTS. In a case where it was inquired whether the "Abbati Curato Lucernari" was permitted to reside in a house belonging to his family, located in the region of Civita, on December 20, 1755, the response was: negatively. In the deliberations of Tyburlina on July 29, 1786, although the parochial house had been abandoned by the parish priest, the following question was raised: "Whether Father John Baptist Ciucci is permitted to reside in a house belonging to his family," and the response was: negatively, with the proviso that the Bishop must grant the parish priest a reasonable time to restore the parochial house, after which he must reside therein. Similarly, in Tarraconensis on March 24, 1736, which had previously been discussed in the Sacred Roman Tribunal, due to unhealthy air, the parish priest had left the parochial buildings and had offered a place within the parish, called Riera, and had even left the chaplain in the parochial buildings. The question was: "Whether the parish priest of the village of Tamarit is obliged to reside in the parochial buildings of the village and locality of Tamarit," notwithstanding the asserted permission of the preceding Archbishop to reside in the place called Riera within the limits of the aforementioned parish. The response was: affirmatively. Furthermore, in Fulginata on August 19, 1752, the matter of a parish priest was discussed, whose parish consisted of two distinct villages; in the first, there was the parochial church with the parochial house, while in the second, where there were more families, there was also a church; these churches were distant from each other by a quarter of a mile. Since the parish priest had abandoned the parochial house due

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to illness and had gone to the other village, where he was received by a relative, and the parishioners of the first village complained, the Sacred Congregation responded: "The Bishop must urge the parish priest to reside in the parochial house." Subsequently, a case was presented with three questions, the first of which was worded as follows: "Whether the parish priest of the parochial church of Saint Mary, assumed into Heaven, in Colle Campi Rasci, is obliged to reside day and night in the parochial buildings of the same church." The Sacred Congregation responded: affirmatively. It is observed that if the parochial church lacks its own buildings, it is permissible for the parish priest to rent another house within the boundaries of the parish, which should be close to the church. Thus, the cited authors state. And Saint Charles Borromeo, a zealous executor of the decrees of the Council of Trent, although in a case of absolute necessity...

[*Latin ed. p. 291*]

RESIDENCES AND PAROCHIAL RIGHTS. 291. He permitted pastors to reside outside the boundaries of their parish, but, according to the records of the Church of Milan, volume I, page 80, he established the rule: "If any pastor, even an urban one, does not have a suitable parochial dwelling where he may reside, he must rent a house within the boundaries of his parish, as close as possible to the church over which he presides." This is the teaching of the Holy See, as found in Ravenna, Book 2, Decretals, year 1579, page 110 and following. For, when it was asked whether a pastor was obliged to reside in the parochial buildings of the church, or within the limits of the parish, and whether the pastor who never resided in such a manner was bound to restore the fruits [of the office], it was the judgment of the Holy Congregation: "He is not bound, but he must be compelled in the future to reside in the house of the church, or, if the church does not have such a house, in another dwelling that is closer within the limits of the parish" (1). However, since, according to the teaching of the Doctors, it seemed that the pastor could reside in either of the churches, it followed that the pastor had the faculty of residing in the parochial church of St. Herculanus, which, however, since it lacked a suitable parochial dwelling, it seemed that the pastor was permitted to rent a house near that church; therefore, it remained to be judged whether such a house could be considered the house of his family, in which the pastor resided.

OPINIONS OF ADVOCATES REGARDING THE SAME DOUBT. — On the contrary, in the case of the parish church of St. Sabinus, there was evidence in favor of the parishioners, although an authentic document of union could not be shown, there were still indications that the parishes had been united in a dependent and subordinate manner; for this was testified by Paro (1). Although a pastor who, having left the house of the parochial church, resides in another dwelling within the limits of his parish, does not fully fulfill his obligation to reside there; nevertheless, he should

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not be considered to incur penalties immediately imposed on those who do not reside there, as stated in chapter 1, session 23, concerning reforms. Indeed, he will incur ecclesiastical penalties if the Bishop compels such a pastor to fulfill his obligations, as it seems that the Holy Congregation for the Council judged in the case of Nullius, on April 6, 1606, volume 10, Decretals, page 148, in which it responded to two proposed doubts: "To the first, such a rector ought to reside in the parochial buildings of the church, if the church does not lack such buildings; to the second, if he resides within the limits of the parish, but not in the parochial buildings of the church, he must nevertheless render his fruits, and he will not incur any penalty other than that which is contained in the precept of the Bishop urging him to inhabit the parochial buildings of the church."

[*Latin ed. p. 292*]

292 OF PAROCHIAL RESIDENCES AND RIGHTS. Referring to the preceding chapter, which mentioned the ancient tradition in which the church of Saint Sabinus was distinctly called "Matrix," the Vicar himself affirmed that another filial church still bore that name. Furthermore, there were more evident indications that the church of Saint Sabinus held a position of preeminence, such as the presence of a parochial house, a Sodality established therein, consisting of the residence of the priests, and the celebration of sacred functions on the more solemn feast days in that very place. Even if all these things were to be overlooked, there remained an unforgettable custom that determined the residential church; thus, even if the union of parishes were to be considered equally principal, and the power to reside in either church were traditionally granted to the parish priest, nevertheless, given the unforgettable custom favoring the church of Saint Sabinus, it was to be observed as if it were a law. REGARDING THE PARISH PRIEST'S OPINION ON THE SECOND QUESTION. After the main question concerning the residence had been debated, a few points were raised regarding the second question. It was reported that Pope Innocent XI had strongly recommended the establishment of a Sodality of the Most Holy Body of Christ in every parish. Furthermore, it was understood that such a Sodality was responsible for the necessary expenses for the worship of the Most Holy Sacrament, from its own funds. *Ferrariensis, Confraternitatis, 14 September 1778, to III. dub.; and Feretrana, Confraternitatis, 12 December 1829, to III. dub.* Moreover, the Sodality, of which we are speaking, seemed to be established for the benefit of both parochial churches; therefore, it was understood that it should provide services and supplies to both churches. REGARDING THE OPINION OF THE CONFRATERNITY ON THE SECOND QUESTION. However, on the contrary, although it might be conceded that the Sodality was responsible for providing supplies to the parochial church, it was noted that this obligation did not extend beyond the worship rendered to the Most Holy

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Sacrament; nor could the custody and possession of these items be taken away from the Confraters who had their own seat in the church of Saint Sabinus. Furthermore, given the supposed equal union of the parishes, the church of Herculaneum could not claim any right over these items. Indeed, since such a union of churches preserves the rights of each church, it could not be said that the Sodality was obligated to provide services to the other church. REGARDING THE THIRD QUESTION. It was stated that the custody of the keys to the parochial archives belonged exclusively to the parish priest. For example, in the case of Carpenloracten, on September 15, 1781...

[*Latin ed. p. 293*]

RESIDENCES AND PAROCHIAL RIGHTS. 293. Even in a more difficult case, the judgment was given in favor of the Parish Priest. The matter concerned a Chapter which claimed to possess actual jurisdiction over the parish itself, and therefore the right to hold the key to the parish archives. The following question was raised: "Whether the custody of the parish registers should belong exclusively to the Curates, or Vicars Curates; or rather, whether they should be kept under a double lock, of which at least one key should be retained by the Chapter." The Sacred Congregation responded affirmatively to the first part, and negatively to the second. Based on these and other considerations, the following questions were resolved: I. "Is the Parish Priest obliged to reside in the church... (according to St. Sabinus); or rather, is he permitted to reside in another church in the same parish?" II. "Is it permissible for the Parish Priest to transfer the property of a Brotherhood of the Most Holy Body of Christ, and to use it in the church... (according to St. Herculanus)?" III. "Can the parish archive be kept by the Parish Priest under a single key; or rather, does the right to keep it under a triple lock also belong to the Syndics?" RESOLUTION. The Sacred Congregation, after a further discussion on November 26, 1864, decided to respond as follows: To I. For the present, it is to be held that the Parish Priest is obliged to reside in the parochial house of the church... (according to St. Sabinus); but if a suitable house has been built by the parishioners of another church, then he may reside there alternately, and according to the judgment (1). To II. Negatively. To III. Affirmatively to the first part, and negatively to the second. FROM THE ABOVE, WE GATHER: 1. In churches which are said to be united, three distinct qualities of union must be clearly distinguished, namely, the promiscuous, the subjective, and the principal (2). (1) The intention of the Sacred Congregation was that the capitular Vicar should declare how, hitherto, provision has been made for the obligation of saying a double Mass for the people. (2) There are authors who distinguish other species of union, but their opinion is not accepted, but the opinion of the Glossary in cap. Novit. Ne sed. vae., which distinguishes only three species of union, is approved. And it is certainly

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to be considered in such distinctions only the specific difference, otherwise the distinction is meaningless.

[*Latin ed. p. 294*]

294. RESIDENCES AND PAROCHIAL RIGHTS. II. Different qualities of union give rise to different rights and obligations. III. In parishes united by a subjective union, the pastor must reside in the church, which is commonly called the "mother church," and is not bound by the obligation of saying Mass twice for the people. For from this real union, only one parish arises in fact and in name. IV. In parishes united by an equal-principal union, the pastor must reside in one or the other, or even alternately, according to the different annexes of the churches, and is bound by the obligation of saying Mass twice for the people. For in this union, two distinct and different parishes remain, which are united rather by the identity of the pastor. V. The law of residence requires the pastor to reside in the house of the parochial church, or in a nearby house, if the former is lacking. VI. The pastor does not fully satisfy the law of residence if he establishes his residence outside the parochial house, even if it is within the limits of his parish. VII. Therefore, a pastor who neglects his residence must be compelled by legal means to fulfill his obligation of residing in the parochial house; nor can he easily be excused on the grounds of unhealthy air, and much less on the grounds of family relationships, or other reasons of lesser importance. (i) Regarding the types of union, and how many are possible, as Pitonius rightly observes in his Disputationes, book 4, page 1, he wrote: "Canonists who have sound judgment have only established three types of union in law, while others omit other cases, saying generally that the judgment of the remaining cases depends on the tenor of the privilege, which must be considered," as Hostien himself says. And after describing five types of union, he declares at the end of chapter 4: "But these are not always true, because the tenor of the privilege must be carefully considered." (i) How strongly the law of residence urges pastors can be determined from the following decrees of the Holy Congregation of the Council. In the year 1573, the Bishop of Reggio consulted the Holy Congregation on several doubts concerning the residence of pastors, among other things, asking: "If the air in the place of the cure is so unhealthy that no one can live there without risking their life, unless they are natives of that place, can the pastor not live elsewhere?" The Holy Congregation decided that he could not. However, if the pastor were ill, and could not be treated in the parochial place due to the lack of doctors or medicines, then the Ordinary could grant a delay of three or four months, so that he might remain in nearby places for the purpose of regaining his health, provided that the Ordinary appointed a suitable vicar in the parochial church, with a proportionate share of the revenues of the same parochial church, as stated in Lib. 1, Decrees, page 52. Also, in the case of St. Agatha of the Goths, on March 16, 1641, a rescript

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was issued:

[*Latin ed. p. 295*]

RESIDENCY AND PAROCHIAL RIGHTS. 295 VIII. Furthermore, the force of prescription does not acquire the observance that, although it may last for a very long time, the repeated acts are shown to have been done either by force or by physical necessity. One cannot excuse oneself from residence due to inclement weather or unhealthy air, as stated in *Extra*, book 16, Decretal, page 5, section 3. Also, in the decree of August 4, 1645, it was written: "The parish priest is not excused from residence due to inclement weather," as stated in *Extra*, book 2, title 206. For other serious reasons, such as the inadequacy of income or animosities, the parish priest is not absolved from the obligation to reside, as Pignatelli, volume 7, *Consultations*, number 18, following, reports the resolution: "Since the Bishop of Cagli recently issued an edict that the rectors of parish churches should reside in their churches, Angelus, the parish priest of the church of St. Angel, asks whether he too is obliged to reside, given that the income of the church is very meager, that his predecessors never resided there, that the church is located about two thousand paces from the city, and that it has only six or seven families, and that the parishioners themselves care nothing about the pastor's residence." The Holy Congregation of the Council decided: "The petitioner is not excused from residence for the reasons mentioned above; therefore, he must obey the edict issued by the Bishop on this matter." The same author then reports a decree from the Holy Congregation to the Bishop of Arimino, which we translate from the Italian language: "The Apostolic Visitor wrote to him that he should order the parish priests who do not have a house attached to the parish to reside in another house that can be found within the boundaries of the parish, as close as possible to the church." Parish priests cannot absent themselves from their duties under the pretext of animosities without the permission of the Bishop, but they must request it from the Holy See or the Holy Congregation, which usually examines the circumstances and, in particular, the cause of the animosities, and whether the parish priest was at fault, and other matters carefully. If permission to be absent is granted, it is granted for a short time, and among the conditions imposed is that the parish priest remain in a safe place, as close as possible to the parish. The reason why the law of residence is so strictly enforced for parish priests, so that they are obliged to reside even with great inconvenience and sometimes even with danger to their lives, must be repeated from the nature of the office that the Church entrusts to them and which they themselves assume. Parish priests are called to a pastoral office, which is proper to the Bishop: this pastoral office is entrusted to the parish priests not by any means, but according to the order established by the Church; and the order established in the Church is that each parish should have a priest assigned to it as its own pastor, so that the people

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are entrusted to him as his flock within the limits of his authority. From this intimate and established relationship, very serious duties arise, among which the most important is that of residence, so that the parish priest must live among the flock in order to feed them with the word and by example, and to be available to their needs, even with great inconvenience to himself, as long as he is a pastor. The Church has determined a method so that this duty of residence is not carried out arbitrarily, but in an orderly manner consistent with the other pastoral duties. It is established that each parish should have its own boundaries and its own church where the parishioners gather, and where the parish priest should exercise his principal duties, and where his house should be, where he is obliged to reside, concerned about the church and the flock. See also what was said about the pastoral office, V. I., page 409 and following.

[*Latin ed. p. 296*]

296. RESIDENCES AND PAROCHIAL RIGHTS. IX. In the present case, I have demonstrated the constant need for residence within the church of Saint Sabinus, compelled by physical necessity, because a habitable parochial house was lacking in the other church. X. Finally, it is most highly recommended that a Sodality of the Most Holy Body of Christ be established in each parish (I). (i) In order that the faithful may be inflamed with greater veneration for the most august Sacrament of the Most Holy Body of Christ, and that it may be accompanied with greater reverence when it is carried from the church to the homes of the sick, Pope Paul III first approved the establishment of such a Sodality in the city, and subsequently, through two Constitutions, granted that all Confraternities of the Most Holy Sacrament, established or to be established in any place, should enjoy the same privileges that had been granted to the Confraternity of the Most Holy Sacrament established in the church of Santa Maria sopra Minerva in Rome, and that they should continue to enjoy them. Pope Innocent XI strongly recommended that these Confraternities be established in every parish, as stated in the Constitution *Iniuncti nobis*, dated 1678, and many Popes have generously bestowed spiritual gifts upon the confraters, as testified by Cardinal Peter in Constitution VI of Eugene IV, n. 3 and following, volume A. Although the Constitution of Clement VIII, which begins: "Concerning whatever," dated December 7, 1601, prohibits the establishment of multiple Sodalities of the same name and institute in the same city or town; nevertheless, Sodalities of the Most Holy Sacrament are exempt from this prohibition, and may be established in any parochial church, even if another Confraternity is already established there, as decreed by a decree issued by order of Pope Paul V on September 27, 1607, and reported by Ferraris in *Bibliotheca canonica*, article I, n. 33. On April 23, 1676, the Holy Congregation for Indulgences issued the following decree: "The Holy Congregation,

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desiring above all to increase the veneration and worship of the Most Holy Sacrament, and for that reason establishing such a Society in all parochial churches, and in order to encourage the faithful to do this with the greatest zeal, following the example of the living oracle of the Most Holy Lord Pope Clement X, who followed in the footsteps of Pope Paul V; decrees and declares, in accordance with the aforementioned Constitutions of Paul III, that all Confraternities of the Most Holy Body of Christ, whether already established or to be established anywhere in the world, without any new or special concession, communication, or aggregation, shall participate in all the privileges, concessions, indulgences, faculties, graces, and indulgences granted by the same Paul V to the Archconfraternity of the Most Holy Sacrament of Minerva by a Brief dated at Rome, near Saint Peter, on November 3, 1606, and that they shall be entitled to enjoy and possess all of these, and shall be obliged to do so immediately upon the establishment of their Confraternity, whether by Apostolic or Ordinary authority; with the exception of anything contained in the Constitution of Clement VIII. Not withstanding, etc. Furthermore, Pope Benedict XIV granted other special indulgences to the confraters for each work of piety and charity, as stated in the decree of the Holy Congregation for Indulgences dated August 11, 1749. Moreover, certain privileges are granted to these Confraternities in all processions in which the Most Holy Sacrament is carried, as can be seen in the collection of decrees by Gardellius.

[*Latin ed. p. 297*]

CELEBRATION OF THE MASSES. December 9, 1855. Summary of prayers. In the parish church of N., there exists a chapel whose founding charter, dating from the year 1412, is expressed in these words: "We desire that the Beneficiary (that is, the Chaplain) of this church or chapel be obliged to celebrate Mass every day, or at least five times a week, in said church; unless a just impediment arises, and if he is negligent, or unwilling to celebrate said Mass, or if he does not celebrate said Mass, then the said Beneficiary shall incur a penalty of two solidi for each occasion on which he does not celebrate said Mass, which shall be converted to the benefit of said church." After this founding charter was explained, the Ordinary inquired whether the Chaplain could be obliged, at the request of those interested, to include feast days among the five weekly days (on at least some of which he is obliged to celebrate Mass according to the founding charter). Asked to examine the founding charter again to see if he might find anything that more precisely explained the origin and value of the aforementioned obligation, he cited the following canons: 230, 1017, 1592, 1609, 2006, 3001, 4079. On August 22, 1842, in Leovici, the following question was submitted to the Holy Congregation for Indulgences, which clarifies several matters concerning the manner in which Confraternities are to be established by

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Bishops. "What formula should be used in communicating the Indulgences granted to Archiconfraternities established in Rome, a communication which the same Bishop extends to various Confraternities established or to be established in his diocese, with authority delegated to him by the Apostolic See, while observing what must be observed according to the Constitution of Clement VIII?" Is it necessary to communicate each Indulgence specifically, and to do so with the intervention of two members of the Chapter? Is a deficiency in the statutes, or in the officials of said Confraternities, or even if particular works or uses are employed that are not in conformity with those observed in the Archiconfraternities of Rome, sufficient to invalidate the erection of the Confraternity, or the granting of Indulgences?" The Holy Congregation responded: Regarding the first part: No specific formula is prescribed to Bishops when establishing sodalities, except for those of Regular Orders, according to the Constitution of Clement VIII; therefore, the decree of the erecting Bishop alone will suffice for the canonical erection. Regarding the second part: No. Regarding the third part: No, provided that the works are carried out to which Indulgences are attached.

[*Latin ed. p. 298*]

298. CELEBRATION OF THE MASSES. Besides the words mentioned above, nothing else has been found that could shed clearer light on the matter. Meanwhile, it was noted that, due to certain circumstances, it was decided by the Curia around the year 1854 that the Mass to be celebrated on feast days should be included among the five Masses. THINGS WHICH WERE OBSERVED BY OBLIGATION. – According to the general principle by which the obligations of benefices are determined according to the laws of their foundation, so that these cannot be changed for the better, Clement. It happened that, concerning religious houses, it was observed that the sermon should be about the Mass, and that the Mass should be celebrated five times a week at least; since the determination of the days had not been made, it seemed to be a free celebration on any day of the week. Indeed, the assignment of specific days or hours is a new obligation, which cannot be imposed if it is not prescribed in the law of foundation. However, it was not to be denied that the founders themselves, in such institutions, usually took into account the needs of the faithful; hence, it seemed that Ceccoper Lucubrat. canon. L 3 n. 146 and following, did not allow chaplains to perform the sacred mysteries at times and hours of their own choosing, but that they were to celebrate them for the benefit of the church, according to the arrangement of the table, or the mandate of that person to whom the right to arrange the Masses in the church belongs, and in the case where they refuse, the Bishop should provide, through the act of visitation, that the first Mass be celebrated early in the morning, and then the others at due intervals until noon, for the benefit of the people, especially on feast

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days. To support this assertion, it is alleged that a resolution of the Holy Congregation is found in Nicoli, in the section "Cappellanus" n. 3, which says: "Chaplains are also obliged to celebrate in times convenient for the church." However, Pitonius, in "De Controv. Patron," allegation 100 n. 29, presents a contrary opinion, citing a resolution of the Holy Congregation in Pesaro, April 6, 1647, which is found in the records of the Holy Congregation, Book of Decrees, 18, page 231, with these words: "The Holy Congregation responded: A Bishop cannot compel an Ordinary or orator holding a simple benefice in the cathedral church of Pesaro to celebrate Masses there on two days of any week, and on certain feast days, or to have them celebrated by others on those days and hours by the same Bishop."

[*Latin ed. p. 299*]

CELEBRATION OF THE MASS. 299. Pisaurensis [Decree], according to the prescriptions; but only that he can exhort him to celebrate, or cause him to celebrate. This is also found to have been decided on another day, May 17, 1653, as can be read in the same records, Lib. 19, Decret, p. 243; the question being: "Can chaplains of lay patronages established in a cathedral church be assigned by the Bishop days and hours in which they should celebrate Mass by obligation of said chaplaincies?" The Sacred Congregation responded: "The Bishop cannot compel such chaplains to celebrate Mass, or cause them to celebrate, on certain days and hours." Recently, the question was raised in Florence, on the celebration of the Mass, on April 18, 1863. It was stated that chaplaincies existed in the church of the Brothers of the Hospital, for the service of the sick, either established there or even transferred, with the obligation of celebrating Mass on festive days. However, since the Brothers judged it to be very beneficial for the good of the people and the service of the church, that Masses should be celebrated continuously from morning to noon, which they could not do without an increase in alms, they came to the opinion of either rejecting the obligation of celebrating at certain hours, or the obligation of increasing the alms. Therefore, the question being: "Can and in what way can the Rectors of chaplaincies be compelled to celebrate Mass, or cause it to be celebrated, at certain hours on festive days, in this case?" The Sacred Congregation responded: "Negatively, in all respects, and let the Archbishop use exhortations." It was noted that this was deduced from a general principle, that a new obligation cannot be imposed on benefices by episcopal authority, which is not contained in the foundation. After these things were proposed, it remained to be judged whether, in the case presented, the chaplain was bound by the law of the foundation to celebrate one of the prescribed Masses on festive days in his own church.

RESPONSE. — The Sacred Congregation, having considered the questions presented in summary form on December 9, 1865, decided to respond: "No, he is not bound."

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CONCLUSION: I. The obligations of chaplaincies or benefices must be determined according to the law of the foundations, and it is not possible by ordinary authority to increase those obligations.

[*Latin ed. p. 300*]

300. CELEBRATION OF MASSES. It is clear that, since no specific days or hours for the celebration of Mass are established by the founding charter, chaplains cannot, in a regular manner, be compelled to celebrate Mass on specific days and hours (1). (1) I say "in a regular manner," because although a bishop cannot impose a new obligation on benefices, and therefore cannot impose a new obligation on chaplains to celebrate Mass on specific days and hours if it is not provided for in the founding charter, nevertheless, if there is an urgent need of the people to whom he can easily not provide assistance in another way, he can compel the chaplains to celebrate Mass at a specific time or hour. However, he can compel them not by the force of the founding charter, but by another general principle, because, as priests, they have, by reason of their order, a duty attached to them towards the people, as Paschalus states in *De Sacris Missae*, question 844, number 2. Indeed, the Council of Trent, in session 23, chapter 14, states: "Those who have faithfully and diligently performed the aforementioned duties, and are admitted to the order of the priesthood, should have a good testimony, and these should be considered suitable for teaching the people those things which it is necessary for all to know for their salvation, and for administering the sacraments..." Therefore, the bishop should see to it that at least on Sundays and solemn feast days, they celebrate Mass. Thus, Paschalus, in the aforementioned passage, wrote: "If in any town there is only one priest who is obliged to celebrate Mass on feast days, and there are other simple priests present, the bishop can order them to celebrate Mass on feast days. The reason is because there is a need of the people, because it is difficult for everyone to gather at the same hour to hear Mass, and therefore, since priests have a duty attached to them by reason of their order towards the people, the bishop can compel them to fulfill their duty to the people by offering the sacrifice, so that the precept of offering the sacred sacrifice can be fulfilled without difficulty..." These words of the author were included by Benedict XIV in his Constitution *Declarasti nobis*, to indicate one way in which the repetition of Mass on feast days can be avoided, as we have discussed, in Volume I, page 50, and following. The same Pitonius, who refutes Ceccoperii's opinion, makes an exception for cases of necessity, with these words: "excepto casu necessitatis ecclesiae pro indigentia populi cui succurri nequeat cum aliis Missis." Perhaps these words should be understood in the same sense as those which are, as Traditionius states in the aforementioned passage. However, although the chaplains about whom we are speaking cannot, in a regular manner, be compelled to celebrate Mass at successive hours for the greater benefit

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of the people, they will not refuse to do so (especially if the bishop encourages them), unless they are those who are completely indifferent to the Christian people, who give too much importance to shameful advantages, or who are pressed by poverty and are forced to seek greater alms. However, in cathedrals or collegiate churches, the canons, or those holding benefices, at the time when, with the permission of the prefect of the choir, they celebrate Mass for the benefit of the people, do not lose their choral distributions, as the Sacred Congregation has repeatedly responded, as you can see in Volume I, page 73 and following.

[*Latin ed. p. 301*]

301 FROM THE CONGREGATIONS CONCERNING THE STATE OF RELIGIOUS LIFE. CONCERNING THE DECLARATION OF APOSTOLIC LETTERS. August 16, 1866. Summary of the case. Although the decree: "Let no one be ignorant," of March 19, 1857, had already been published, which prescribed that simple vows must precede a solemn profession after the completion of the probationary period; nevertheless, Titius, having completed his year of novitiate and being in his sixth year of age, in the year 1861, made a solemn profession, omitting the simple vows (either because of ignorance of the aforementioned decree, which could only be transmitted through the Russian government, or because of the very danger of observing it without prior permission from the same government). Subsequently, Apostolic Letters were issued, beginning with the words: "To the universal," of February 7, 1862, in which it was established that a solemn profession is invalid unless simple vows are made in accordance with the aforementioned decree; a doubt arose concerning the validity of the profession made by Titius, and therefore, the following questions were put to the Most Holy [Pope]: "I. Whether (Titius) validly made a solemn profession." And, II. "Whether at least it has the force of simple vows (that same profession)," or, on the contrary, is entirely invalid, so that it is permissible for him to "take secular vows." Disputed points. THOSE ARGUMENTS WHICH FAVORED THE VALIDITY OF THE PROFESSION. — Since Titius made his profession according to the norms of the Council of Trent, neglecting only the law prescribed by the Most Holy [Pope] in the decree: "Let no one be ignorant," the inquiry was, by its very nature, whether the neglect of the new law rendered the profession null, or only defective. To demonstrate the validity of the profession, the legal principle of Innocent III was presented, which is found in chapter "Ad Apost."

[*Latin ed. p. 302*]

302 CONCERNING THE DECLARATION OF APOSTOLIC LETTERS. The Holy See, in its decrees, states that many things are prohibited, but if they are done, they acquire validity. However, it was noted in the decree: "It is not unknown that a clause was inserted which invalidates [a pro-

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fession], namely, that no profession is valid unless it is made otherwise: therefore, it seemed to follow that a profession made by Titus should be considered valid." Moreover, Innocent III cited this very legal principle in a case not dissimilar to our own. It is known that the law, which prescribes a year of probation, did not include the invalidating clause before the Council of Trent. Therefore, the case presented to Innocent III concerned a certain monk who, before completing his year of probation, had made his profession, and the validity of this profession was questioned. To this, the Roman Pontiff responded: "Although the time of probation granted by the Holy Fathers is not only for the benefit of the convert, but also for the monastery, so that both may test his suitability and his character... nevertheless, if, before the regularly prescribed time of probation, he who desires to become a convert receives the habit and makes his profession, and the Abbot, either by himself or through another, grants him the monastic habit, then both seem to renounce what is known to be introduced for his own benefit; therefore, he is bound by the profession made and accepted, both to observe the rule and to be considered a true monk: because many things are prohibited, but if they are done, they acquire validity." Another argument was put forward to support the validity of the profession. It is known that there are religious orders which extend the period of probation beyond a year, according to their constitutions. Moreover, it has often been debated whether a profession made before the time prescribed by the particular constitutions of the orders is to be considered invalid, or rather, merely illicit. However, the principle prevailed that it is not declared invalid unless a penalty of nullity is added in the same constitutions, specifically approved by the Apostolic See, as Fagnanus states in chapter 8 and following, concerning Penance and Remission, in reference to the decree *Petra ad Const.* 2, number 9 and following, to the decree of Gregory IX, number 22 and following, volume 2, and to the decree of Callistus III, number 11, volume 5, and from several resolutions of the Sacred Congregation, which are cited in the *Capritana Restitutionis in Integrum*, section. However, on July 6, 1737,

[*Latin ed. p. 303*]

ON DECLARATIONS FROM APOSTOLIC LETTERS. 303 Specifically, the resolution concerning the Profession and Marriage of the Roman Order of [the] 27th of November, 1696 (1), was brought up. THOSE THINGS WHICH OPPOSED THE VALIDITY OF THE PROFESSION. In opposition, it was observed that, although the principle of Innocent III is true, another principle is no less true, as it is read in Law 5 C. De Non Dubit. et Const.: "Those things which are prohibited by law, if they have been done, are not only useless, but are also considered as if they had not been done, even though the legislator has only prohibited them from being done, and has not specifically stated that they must be considered as useless." This principle of law was confirmed by a canonical sanction, in Can. Imperiali,

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caus. 25, quaest. 2, and in the Rules of Law, in 6°, Reg. 64, where it is read: "Those things which are done contrary to the law must, without exception, be considered as if they had not been done." It was argued that such a principle does not apply when some Constitution in some way indicates that an act, although illicit, is not invalid. Reiffenst. Lib. i Decret, tit. 2 de Constit, n. 246 et seqq. Fagnanus in Cap. Cum accessissent 8 de Constit, n. 15. However, in the Decree: "Let no one be ignorant," nothing appeared from which it could be argued that a valid profession was not possible, even with simple vows for a period of three years (2). (1) The cited Roman case is read in the records of the S. C. C. Lib. Decret. 46, p. 437, as follows: "N.N., a Roman, after having publicly professed among the tertiaries of the Order of St. Francis, and having remained as a professed in said Religion for several years, suddenly, after being dismissed from his habit, fled, claiming that he had not at all professed, first, because of an interrupted year of novitiate, since he had spent not once outside the convent, and second, because of a lack of four months in completing the age of twenty-one years, which is required by the general decrees of St. Clement VIII (namely, in the Constitution *In suprema Ecclesiae diei*, of March 19, 1603), for such tertiaries, and therefore believing that he was released from the bond of Religion, he took a wife; but the Religion claimed that the alleged nullities did not exist in any way, because the overnight stay outside the cloister was not permitted to tertiaries with the permission of their Superiors, and the Decree of St. Clement VIII, prescribing the age of twenty-one years for such tertiaries, has no annulling clause, since otherwise the age of sixteen years, defined by the sacred Council, is sufficient for the validity of the profession; hence, the professed, being held in prison, and with a wife from the city, proposed the following questions in the present congregation: I. Whether the alleged nullity of the profession is established. II. Whether the marriage, as stated above, is valid." The S. C. Conc. decided on the 27th of November, 1696: In both cases, negatively. (2) In law, there are two related principles:

[*Latin ed. p. 304*]

304 CONCERNING THE DECLARATION OF APOSTOLIC LETTERS. But furthermore, the lauded Constitution, *Ad universalis*, of the 7th of February, 1862, seemed to militate against the validity of the profession issued by Titus, declaring the solemn profession to be invalid, having been issued contrary to the form of the aforementioned Decree. For, although this Constitution was posterior to the profession issued by Titus, it nevertheless had to declare the preceding Decree: *Neminem latet*, of the 19th of March, 1857. Indeed, both civil and canon law proclaim: "Laws and Constitutions of the future are certainly meant to give form to affairs, and not to be applied to past actions, unless expressly and concerning past times, and with a caution that pending affairs are taken into account," as is read in L. 7 C. de Legibus et Constit., and 65 C. de Decurion., and in

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the Decretals, chapter *Quoniam 13* de Constitutivi: nevertheless, if a later law is declaratory of a prior law, its force extends even to past actions, as Fagnanus states in the cited work, chapter *Quoniam*, number 45, where he says: "But this reason ceases in the proper declaration of a Constitution, because it does not begin to obligate from the time it is made, but extends even to past things." Moreover, this was confirmed by examples. The words of the Brief Apostolici, or the Constitution *Ad universalis*, are as follows: "After this decree (*Neminem latet*) had been put into effect, we have learned from experience how much benefit it has brought and can bring to religious families. But recently, we have learned that some novices, having omitted the simple vows of profession, have been admitted to pronounce solemn vows, and consequently, serious doubts have arisen concerning the validity of these solemn vows. Therefore, desiring to remove all cause for ambiguity in a matter of such importance, by our own motion, and with certain knowledge and by the fullness of Our Apostolic authority, with regard to religious men of any Order, Congregation, or Institute, in which solemn vows are made, We decree and declare that none whatsoever are valid, are invalid, and have no force; they must, of course, be considered as if they had never been made." Hence: "Many things are prohibited which, if done, obtain firmness." And another, as a sort of middle ground, can be added, which is found in chapter *Cum iamdudum* IHde Praebendis, and is from Innocent III: "Many things are tolerated through patience, which, if brought to judgment, demanding justice, should not be tolerated." Such principles cannot be applied indiscriminately, but according to the matter in question, the tenor of the Constitutions, and other circumstances.

[*Latin ed. p. 305*]

CONCERNING THE DECLARATION OF APOSTOLIC LETTERS. 305. The taking of solemn vows, whether knowingly or unknowingly, in any manner, under any pretext, and with any appearance, by novices, whether religious or laity, and even by converts, who, although they have fulfilled the requirements and novitiate as required by law, shall not, before having made their simple vows, and having remained in them for a full three years, be released from their solemn vows, even if the intention is held, either by Superiors or by the novices themselves or by both, to receive them into solemn vows and to release them from them, and all the rites prescribed for the taking of solemn vows are performed. We wish, we decree, we command this, notwithstanding etc. » Furthermore, although the word "declare" is not found in this solemn Constitution, nevertheless the word "decree" is present, and, according to its breadth, it is fitting to imply also a declaration of a law already enacted, as observed by Fagnanus, loc. cit., n. 12. Nor do the words "hereafter" seem to be contrary, which refer to the future: for these words do not seem to exclude the past time in our Constitution. With these and other considerations, the proposed questions are to be

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resolved: I. "How should the first question be answered?" II. "How should the second question be answered?" RESOLUTION. – The Holy Congregation, after discussing the matter concerning the status of Regular Canons in a meeting on August 16, 1866, judged it fitting to respond as follows: To I, affirmatively. To II, with the provision stated in the first. FROM THESE, THE FOLLOWING ARE GATHERED: I. The time of probation was instituted by the Holy Fathers for this purpose, "that the novice might be able to experience the hardships and customs of the monastery." II. Such a prescription concerning the time of probation, although religiously to be observed, did not pertain to the essential form of the act of religious profession, during the time of the Most Reverend Innocent III. III. Therefore, if the time of probation is not accurately observed, both the novice and the abbot of the monastery seem to renounce that which was introduced for their own benefit. Ada, vol. II, fasc. XII, 20.

[*Latin ed. p. 306*]

306 CONCERNING THE DECLARATION OF APOSTOLIC LETTERS. IV. The Council of Trent, in its first session, held in the year 1545, in the 25th decree concerning religious orders, prescribed a probationary period, stating that this time should be considered as part of the act, to which neither party can any longer renounce (1). V. The decree of the Most Holy Fathers: It is not unknown that, in this our age, the time of the religious profession has been wisely extended, with simple vows prescribed in the meantime, which have not yet seemed to pertain to the form of the act; to which a clause rendering it invalid had not been added. VI. A solemn Constitution was issued: "Ad Universalis," stating that the profession of simple vows after the probation or novitiate, duly completed, and the continuation of those same vows for a full three years, pertain to the form of the act. (1) "A decree that renders something invalid introduces a form to which it is impossible to renounce... for where the form is given, the consent of the parties is of no effect." – Fagianus, in Cap. de Apostolicam de Regular, n. 24.

[*Latin ed. p. 307*]

307 APPENDIX IX. THOUGHTS WHICH FATHER BARTHOLOMEW HOLTZHAUSEB ENTERTAINED IN HIS MIND, FOR THE BENEFIT OF THOSE WHO HAVE DEDICATED THEMSELVES TO THE SERVICE OF THE CHURCH.

On the occasion of the letters of the reigning Pontiff, which are displayed at the entrance, so that it may not be overlooked by those who enter, this volume, I, myself, did not fail to read the words: "Does it profit, with oneself, to neglect the remembrance of the life of our Priest?" And I said to myself, "Does it profit a single man? What great things have we discovered that I alone can accomplish, even if I should be completely exhausted?

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Our powers are so limited, so brief! Yet, it seems possible to doubt and to undertake, and to complete; what will be done about these things in a short time? Will not these things quickly vanish with me, unless I enlist associates in my work, who, filled with the spirit of God, supporting my weakness, not only can they help me in my labors, but even after my death, they can promote the ecclesiastical ministry, and bear fruit with even more abundant fertility?"

To reach this goal, and to secure the path by which he conceived and nourished his thoughts, namely, those things which are the sum of all that he had conceived in his mind, especially for the purpose of sanctifying the clergy, he acted in the most opportune manner in the region of Upper Germany, and he offered himself, rather, to the Church, than to any ecclesiastical society.

Indeed, the Reverend Father I. P. L. Gaduel wrote down in Latin what he had conceived in his mind, and with which he was most deeply affected. Therefore, from Book III, chapter 2, concerning his vocation, the following are extracted:

Zeal, which burned and flowed so ardently in Bartholomew, so that many, both pious and learned,

[*Latin ed. p. 308*]

308 APPENDIX ix. Concerning the knowledge that priests ought to acquire, and the establishment of a "sacerdotal college." To the bishops, that the clergy, both in external matters and in the administration of the sacraments and discipline, might be models of all knowledge and virtue, and, finally, worthy pastors for the people; for the proper governance of such a body would indeed be difficult, but not impossible, and some of their own prelates might select from among themselves those who would perform the duties of the fathers and succeed them in office. Moreover, the most excellent thing would be to have a common body of priests, endowed with zeal and internal knowledge, whom the Lord had chosen and whom He knew well. But it is the custom to provide assistance to those who are in need, and to those who have families; and since these [priests] are scattered, and are not connected to each other by any bond of custom, many of them, mingled with bad habits, languish and feel that their zeal is almost extinguished; and since they see that they are unable to derive any fruit from their labor, they despair.

Therefore, it is necessary to establish seminaries, in which young clerics, through discipline, might be nurtured with a new spirit. Also, some of these priests might be brought into parishes, so that they might be an example to others, and also, in other ecclesiastical functions, might assist bishops, either at their request or with their approval, and might give help and encouragement to others. Finally, might not a refuge be established for the elderly or the sick, in order more certainly to provide for their honor

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and the salvation of souls? If all societies seek the same end, why not also *Media*, so that the remaining time of their lives might be spent there, not alone and deserted in a secular home, but in a sacerdotal home, where they would be cared for by their brothers, bound together by the same spirit, and comforted by fraternal affection. What comfort to all hearts! They would be assisted by their own rules, and by the duties of their ecclesiastical and pastoral life, and would be helped by others, and would be joined together in the same spirit.

[*Latin ed. p. 309*]

APPENDIX IX. 309: "By spiritual aids, by which to attain to the best life, and to render holy death opportune, he himself responded." Many centuries ago, as well as in the present time, countless religious men dedicate themselves to the common life, and to pious retreats, and to seminaries, where it is necessary to live together, and there are not always many priests; but rather, in a certain way, they are more fervent in the acts of the apostolate. Why, therefore, can they not easily live together and form a society?

1°. This difficulty vanishes if we speak of large parishes, or of houses dedicated to pious retreats, or of seminaries, where it is necessary to live together. For it is easier for priests living outside the cloister to form a society than for those who are lacking in resources or vicars. Those who are thus joined together, with the care of souls, the administration of parishes, and the management of Christian schools entrusted to them, will open new and abundant sources of ecclesiastical vocations. Is not this a part of the Catholic clergy that constantly assists bishops in dioceses, and pastors in parishes? Therefore, endowed with greater virtue and a more abundant spiritual good, with holy discipline and zeal, why should they not be united? And as the Council of Trent asserted, that the salvation of the people depends greatly on the sanctity of pastors, to whom did these words apply?

2°. Moreover, if only one priest can be accommodated, in such places those will be chosen who are most useful to the Church. It will be necessary, especially if they have given evidence of a life of piety, that they remain there for a long time, so that even more ways may be devised by which the society may be united with its superiors through frequent intercourse.

Finally, the profound thinker, Bartholomew, did not conceal his thoughts: "Indeed, how can the essence of common life be reconciled with that manner of living, by which priests are compelled to live for their ministry, who live outside the cloister; for that could be a certain thoughtless aggregation of thousands,..."

[*Latin ed. p. 310*]

310 APPENDIX IX. "And this order is the true hallmark of the Society. For the common life, both in regard to the duties of the priesthood and the

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care of their ministry, is an essential and most important characteristic, and it clearly demonstrates what is possible. To those dispersed in parishes, let them come together with one spirit, one purpose, united by common vows and counsels, and let them be informed about the common treasury, or common income, which is to be the property of all, so that all may be one Body, of which each member is a part, joined to the Body and living in the Body, not living their own individual life, but the life of the Body itself; so that whoever feels his own weakness may have his strength increased by the abundance of the Body; so that, united as one, they may form a family, in which true brothers are present, and a father, and with diligent hearts, it may be known and felt; in which you may be sure that whatever evil may happen, there will always be someone to help you, who will offer help and assistance with spiritual gifts, having left the world, and who, through the grace of God, will close the door to worldly things, not as if in a foreign land, but in their own home, always present. These are the things that should be observed by the priests of the Society, so that, even if someone were to be far away for many years, and living alone, he would certainly not be, as some say, forsaken, or lacking in help or strength, but would be a member of a certain Body, and a person of the Society. Was not Saint Francis Xavier a member of the Community, when he crossed the ocean alone, or when he was in the deserts of India, or on the shores of Taprobane? Therefore, it is most important..."

[*Latin ed. p. 311*]

XIX; 3. He returned; and he also perceived, with profound emotion, that those who had first conceived the idea were not only the Founders, but also many Ecclesiastics, who had destined themselves as workers in the same endeavor; and whether a triumvirate was needed? He did this, and with the utmost haste, because of the weakness and the sadness of abandonment, since no one was there to care for them, and these Presbyters, living honorably, were scarcely animated by a moderate zeal, but it could happen. These are thoughts from the life commentary of a Priest. Such thoughts, which the Saints made and admired, and which, according to the Gospel, if sustained, would greatly strengthen and invigorate the work of the Church in Germania, with the help of God, the humble Servant of God, with great aids, incentives, and the communal life, completed, giving examples of virtues to venerable Bishops, led as it were by the hand towards perfection, and approved by prelates, and finally, by brothers, having embraced the zeal of the Apostles. In our Apostolic age, afflicted, and especially in these last years, this Priest was so excited to found societies that we see them growing more and more vigorously every day, and we have said nothing about this in the matter of the congregation of the Most Holy. I. page. Of the Ecclesiastical Vo-lume, note 92. But he anticipated from the Institutes, which imitate the form of the Regular Orders, more obscure aids for this

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undertaking. First of all, Bartholomew's idea is distinguished from the concept of the Regular Order. For the Order, in order to accomplish this, is a moral body, which spreads its veins and nerves throughout the entire body of Priests, either by acting, or by virtue, so that all the veins and nerves are gathered into the supreme Order, and all are brought into the sphere of the Moderator, to whom the Regulars stand independently of the Ordinaries of the place (except in cases legally excepted) in all respects.

[*Latin ed. p. 312*]

312 -APPENDIX IX. These [institutions] are subject, according to their own Constitutions and solemn vows, by which they are perpetually bound. Therefore, those who aspire to the regular life, and who contribute their efforts to its exercise, are, under certain conditions and with due regard to the jurisdiction, withdrawn from the authority of the Bishops (whom the Holy Spirit has appointed to govern the Church of God), for the sake of their own perfection, and for the good of the Church, in this second form of ecclesiastical family. It is therefore clear how different is the concept of Bartholomew from that of the recent institutions, because Bartholomew intends to establish a distinction between the clerical state and the secular state, while the Holy Canons do not permit or recommend such a distinction. All those things which can be done, or ought to be done, by clerics, without in any way exempting them from the episcopal authority, to which, according to the best laws, they ought to be subject, and which, according to ancient Canons, have been devised to assist the life of the clergy, are those things which the Church, with the approval of the Bishop, seeks to promote, so that the priests may become more perfect, and may increase in number, to the greater safety, strength, and fruitfulness of the Church, and to the good of their diocese and of the faithful entrusted to them. Therefore, the Society which Bartholomew wished to found is not subject to the jurisdiction of the Bishops in the dioceses in which its members reside; nevertheless, it remains subject to the Constitutions approved by the Holy See, as are the Orders which imitate it: but it is merely a private Society, which can be multiplied as often as there are places in which several clerics may be found. Nor is it necessary for the essence of this community of life that the clerics should live under the same roof.

[*Latin ed. p. 313*]

APPENDIX IX, 313 IX. For this alone pertains to the integrity of His coming, which must be preserved, as often as it does not impede the ministry of Christ the Lord. "Furthermore," He says, "everyone ought to begin the following state before the cessation of the former, and as the former diminishes little by little, the latter state grows stronger, successively increasing, by which we can distinguish."

Thus, there are diverse states of the Church, according to the distinction

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of the servants of God, which can be applied according to the reason and nature of the places, and according to the time that Christ the Lord spent among men, and from the time of the Apostles until Nero, who first persecuted the Church.

It must be understood that the more perfect such a union is, the more abundant will be the fruits expected in this first state, which has been nourished by the divine grace. Few secular clergy, joined in this perfect society, can work for the light and truth of the faith.

The second state, which He calls the state of persecution, lasted until Constantine the Great; during this time, the vine of the Lord was watered with the blood of the martyrs.

The third state of the Church, which is that of the Doctors, and which He illuminates, lasted until Charles the Great and Leo III, during which time heresies were eradicated, and the Christian religion was strengthened throughout the world.

The fourth state of the Church, which He calls the state of peace, lasted until St. Leo X and Charles V, during which time many saints, kings, emperors, and ecclesiastics flourished, renowned for their doctrine and sanctity, and during which no heresy arose for more than *200 years*.

[*Latin ed. p. 314*]

314 APPENDIX ix. The Fifth State of the Church. We, who ourselves have witnessed the loss of so much, begin to describe it, prefacing it with the words "Behold," as we have done with others: "And to the angel of the church in Sardis write: 'I know your works, that you have a name that you are alive, and you are dead. Awake! Strengthen what remains, which is on the verge of death; for I have not found your works perfect before God. Behold, I will strike down those who hold this doctrine of yours, and I will strike them with a sharp sword, and you will find that those who are among you are where they ought to be. Repent, or else I will come quickly, and I will not spare anyone who dwells in the earth.'"

The fifth state of the Church began to be marked by impoverishment under Emperor Charles V and Pope Leo X, around the year 1520. It will last until the strong monarch arrives in our age, and will be called "God's help," restoring all things (I). This state is the state of the Church's affliction, desolation, humiliation, and poverty; and it is rightly called the purgative state, in which Christ the Lord has been and will still be threshing His wheat, but the chaff has been made a tribute: the Church has become humble and lowly, because it is blasphemed by heretics, and it is despised by wicked Christians. The Church is no longer honored, nor is there any respect for its fortunes. And through all these things, God will thresh His wheat and cast the chaff into the fire, but He will gather His wheat into His barn. Finally, this fifth state of the Church is a state of affliction, a state of killing, a state of

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defection, full of calamities for the Latin Church, and few will be left on the earth after the sword, famine, and pestilence; there will be many heresies and wicked Christians, wars between kingdom and kingdom, famine and pestilence, and terrible things.

(I) This particular determination of the time when the strong monarch would arrive, restoring all things in the 17th century (the century in which Bartholomew flourished), does not correspond to the truth, unless perhaps you understand "century" to mean the fifth state about which we are speaking; nor does it seem to contradict the complete context. However, Bartholomew does not insist on this particular determination of time in his copious discourse on the fifth and sixth states of the Church; but only mentions it once, as it were, in passing. On the contrary, he repeatedly states that the end of this fifth state will be the strong monarch, who will be raised up by the special help of God to defend the Church, under whom the Church throughout the world will obtain the tranquility and dignity due to it. This has not only been said by Bartholomew, but also by other servants of God, who have mentioned the arrival of a certain ruler, like a new Constantia, to defend the Church of God. Whether they spoke with prophetic spirit, or were led by human opinion, will be proven by events. I have said these things only for the comfort of those who delight in making conjectures about the future.

[*Latin ed. p. 315*]

x ix. 315. And other things, divided within themselves, are dissolved, are overthrown; principalities are broken. In both kingdoms and in the state of the Church, the divine and salutary laws are relaxed and impoverished; brute beasts are known, in them the same miserable state exists as if all were human precepts and are weakened; the sacred canons are held in contempt; these things, partly already fulfilled, and still will be fulfilled. And all these things, according to the most just judgment of God, will be permitted according to the measure of the coagulation and the bearing of our own actions. Wherefore we are like reptiles upon the earth, and in the sea; like the birds of the heavens; while each one is carried away according to the inclination of his birth, by doing, by sinning, and by believing what he wishes. And after these things follow others: "The children are educated disobedient, immoral, boastful, scurrilous, like reptiles and birds; for inordinate love is shown to them by their parents, all things are irreligious, they are concealed, they are not corrected, the holy domestic discipline is not observed. A simple, good, truthful, and upright Christian ought to be formed; but greater care is taken to make him a politician, and then first he is called a young man of good character; finally, in the fifth state of creation, the day of the fifth creation arrives, in which God said, 'Let the waters bring forth every kind of living creature, and the birds of the heavens'; these two signify the greatest freedom, for what is more free than a fish in the water,

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and a bird in the air? Thus, metaphorically, the earth and the seas are full of reptiles and birds. There are miserable and carnal men, who, with freedom of conscience and of religion (which was also granted in the recent peace), creep and fly after their pleasures and their concupiscences; each one acts and believes what he wishes; of whom St. Jude writes well in his Catholic Epistle: "These, indeed, who are ignorant, blaspheme; and what they do not know, they, as if of hope, a young man of approved character, if he learns foreign languages and external things; if he knows how to simulate and dissemble; if he knows how to adapt himself to all, like an actor; if he knows how to make delights in the manner of a foreigner, etc., and thus this world has constituted all its justice and life in falsehood, in external pomp, in appearance, and in human applause, meanwhile neglecting the internal and true justice which pleases God. I will say nothing of the ecclesiastics and religious, for many have the name, but are dead."

[*Latin ed. p. 316*]

316 APPENDIX And then, referring to the words of the Apocalypse: "Be watchful, and strengthen those things which remain, for that which you have, I fear that you shall lose," Chapter II, verse 10. And the Prelates of the Church of God, and consult with yourselves and with the entire flock, wrote thus: "It is instilled in us even in this time of tribulation, and proclaimed to our ears by the Prophet, that we be watchful, because we are living in a time of evil, in a dangerous and calamitous age; for heresies are flourishing everywhere, and the Catholic faith is gaining strength, and good and learned Priests are needed to guide and strengthen the flock." And fearing that the wrath of God might fall upon us, Bartholomew wrote: "Because we have become worse and more blind, so that we do not even believe in the evils that are coming upon us from our own actions," after which he added: "You will not know the day nor the hour when the Son of Man will come," Matthew, Chapter XXIX, verse 36. For this is the hour when God often strikes Princes through ignorance, foreseeing the consequences, and concealing it from their eyes so that they, weighed down by pleasures, will as well not prepare for battle, because it will come "as a thief in the night," 1 Thessalonians, Chapter V, verse 2. "As a flood; as an arrow flying; as a thunderbolt, and a swift dog." Thus it is written: "You will not know the day of your visitation, and you will not know the hour," and the evils will come, that is, the punishments of your visitation, and you will not be able to provide for them, nor prepare yourselves for the battle, because "it will come suddenly, and unexpectedly, like a storm." The reason remains entirely hidden, like a wild beast, knowing nothing or very little, and caring for neither God nor heaven, nor an honest life, but learning only about robberies, thefts, blasphemies, lies, and the deception of neighbors. Meanwhile, as parents are impoverished, and many seminaries lie desolate, because they do not enjoy the customary and deserved

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revenues. From these things, it is sufficient to show how the present state of the Church, partly by analogies, partly by induction, and partly illuminated by divine light, is revealed to us. Thus, it is clear how grave the danger is to the Catholic faith under the dominion of Rome. Therefore, let the Bishops be watchful.

[*Latin ed. p. 317*]

ixix. Concerning the successive state of the Church, 317: The people of Israel, established by the Lord God, which is a fertile and tranquil land, and which has recently been restored, the Catholic temple, and, as far as we can discern, we expect that, with the liberation of Jerusalem from its captivity restored, all kingdoms, nations, and peoples subject to the Roman Empire, to which Augustus, with his ineffable wisdom, dedicated himself, the strong and most excellent Caesar, who for 56 years ruled, and who, having conquered and subdued all, thus begins to describe the state of consolation: "And to the angel of the church of Philadelphia write." The sixth state of the Church gave peace to the entire world, and reigned alone until the coming of Christ. Beyond this: thus, in the sixth state, God will console the Catholic Church. In your fifth state, let us see where the greatest calamities will be; for, although the Catholics are suppressed by heretics and wicked Christians in all things, and although the Church and its ministers are persecuted, yet the Church will flourish greatly in this state and in the principality; the monarchs of the West will perish, and those subject to them will be repelled, all will demand the Kingdom of God and its justice. For God will give to them good pastors, so that they may live in peace, each in his own field and in his own house, because there will be peace on earth, which the Lord God will then give to men who have peace with Him. The strong monarch, who is about to come, sent by God, will utterly destroy the republics, and will subject all things to himself, and will zealously care for the true Church of Christ; all heresies will be cast into hell; the dominion of the Turks will be extinguished, and that kingdom will reign in the East and in the West; and all nations will come and adore and will await the coming of Christ. This state is typically foreshadowed by the sixth age of the world, which begins with the liberation of the people of Israel and the restoration of the temple and Jerusalem, and with the true Catholic and Orthodox faith; many just men will flourish and will return to the Lord God their own.

[*Latin ed. p. 318*]

APPENDIX » cti super terram et homines ama- IX. » mundum velut haereditatem suam » bunt iudicium et iustitiam, eritque » et liberabit illum adiuvante eum » pax super universam terram, quia » Domino Deo suo de omnibus ini— » divina potestas ligabit Satanam » micis, et de ruinis, et de omni malo. » per » multos annos etc. donec veniat, qui Post plura,

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ad verba: Ecce dedi » venturus est filius perditionis, ubi coram te ostium apertum, scribit » solvetur denuo Satanas etc. Huic ter alia: « i.e. sensum clarum, et in- » sexto statui in similitudinem per - » fectionis congruit sexta dies crea - » tionis, qua creavit Deus hominem » sum nemo » ad imaginem suam, et subiecit ei » pervertere, quia in » omnes creaturas mundi, ut esset » celebrabitur maximum totius mun - » Dominus earum. Sic dominabitur » di » Monarcha ille super omnes bestias » singulari Dei gratia, et potentia » terrae, id est, super efferas gentes » Monarchae illius, et S. Pontificis h. e. quem sen- haereticorum concilium potest sexto statu generale, in qua » populos rebelles, respublicas hae- » auctoritate, unitateque Principum » reticas et dominabuntur homines » pessimorum > passionibus suis malis. Eidem sexto » atheismus omnis haeresis, et proscribetur, et pro- » statui congruit sextus spiritus D o- » flicabitur de terra, et sensus s. Scri- » mini, scilicet Spiritus sapientiae, » pturae » quem effundet abundanter super » sectas haereticorum declarabitur, » universum orbem terrarum in illo » et proponetur credendus, cui ac- legitimus contra omnes » tempore, timebunt enim homines » quiescetur aperiente ostium gra- » Dominum Deum suum, et legem » tiae suae. Consistit haec felicitas » eius custodient, et servient ei ex » in copiosissimo » toto corde: erunt quoque scientiae » confluent » multiplices et perfectae super ter- » omoes » ram, et sacra Scriptura intelligetur » tiones ad ovile unum, et intra- grege fidelium, enim in tempore illo gentes, et populi et na— » unanimiter sine controversia et er- » bunt per ianuam unam, quae est » rore haeresum, et erunt homines » sola et vera fides » illuminati » orthodoxa, et » quam in coelestibus scientiis. D e- » Ioan. X. Erit unus Pastor, » nique Ecclesia Philadelphiae tjpus » et unum ovile, et illud » est sexti huius status. Philadelphia » cap. XXI V. Praedicabitur hoc Evan- » interpretatur amor fratris salutans, » gelium in tam in naturalibus, » haereditatem salvans adhaerente cap. status, et illud Matthaei universo orbe... » Septimus et » Domino. Quae omnia congruunt catholica implebitur quem ultimus Ecclesiae appellat desolationis, » sexto huic statui, in quo erit amor, incipit a nativitate Antichristi usque- » concordia et summa pax, et salu- ad finem mundi, quem statum d i- » tabit fortis Monarcha totum quasi cit non diu durare.

[*Latin ed. p. 319*]

IX, 319. This is taken from a book written by the venerable Militat ac dimicat Ecclesia among the priests, entitled "In Regiones Catholicas." In many kingdoms, the interpretation of the Apocalypse is such that, concerning the condition of Catholics in our time, it is considered the best, that the family of the Church Militant feels honored, and is compelled, and more is described, concerning the Mohammedans, the Jews, the schismatics, the heretics, against whom the Church now vigorously fights, and all others: so that the Bride of Christ, the Teacher of the world, is compelled to fight. Therefore, the kind of war that is inflicted upon the Church in these days,

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to which the deposit of truth has been entrusted, is not new, but already then it flourished and increased, and spread throughout all lands.

As it appears that the present Church militates and fights, and flourishes through ecclesiastical laws, consider this: the Church militates and vigorously fights among heretics, schismatics, ethnics, and barbarians.

For the family of the Lord, or rather, some more noble governments, are compelled to flourish under a harsher or milder servitude: when, on the part of their enemies, the greatest favor and the highest grace are granted; the ecclesiastical goods are seized and taken away; the clergy are forced to seek their livelihood from the governments; the laws of the family of the Lord are not upheld in any way; ecclesiastical matters are judged by laymen; the Church militates and is not diminished, even though it is neglected and publicly scorned; it is compelled to lead a humble life, always fearing its superiors, and is forced to perform its most important duties, and is not subject to the disposition of the same governments; and the governments arrogantly claim authority over public instruction, even ecclesiastical instruction: and although they may do something of their own work, they claim authority over churches and sacred places, so that an opportunity is given for the servitude in which they hold them to increase, or to be diminished, or to be subjected to the penalty of the sword. In addition to these things, religious societies are openly prohibited where they dominate, are persecuted, are insulted: the vestiges and memories of the faith are vilified.

[*Latin ed. p. 320*]

320 APPENDIX IX. that Christian societies may be erased and replaced with those of pagan customs; the Church suffers a grave injustice, but it does not diminish, even though laymen impudently dare to arrogate to themselves the right to review the mandates of the living Peter: the voice of the Supreme Pontiff, which proceeds from the Roman See of Peter, which is perpetually its own, is heard all the more strongly the more diligently it is sought to be suppressed; the Church grows stronger and more vigorous, the more vehemently the Faithful Servant and Prudent One, whom the Lord has established, is pursued through his family; therefore, the Church perseveres and does not fall, even though all arts are employed, whether open, subtle, fraudulent, or hypocritical, to cast it down and utterly reduce it to servitude; for those who employ such means ultimately render themselves vile; and you will not err if you say that Rome is the tomb of its enemies, just as it is the life, salvation, and blessing for all those who hear its voice and sincerely venerate it. Those who fight against the Church should remember that the human family has been made Christian; in the Epistle to the Hebrews, chapter 2, verse 8, they should read about Christ: "All things have been subjected to Him; for in that He put all things under His feet, He subjected to Him nothing that is not subject to Him." But if Paul said

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in his time that all things are not yet subjected to Him, he thereby showed that all things are to be subjected to Him, by that very submission in which we everywhere say that Christ triumphs, Christ reigns, Christ commands. Therefore, it is clear how much obligation is incumbent upon governments, especially Catholic ones, towards the Catholic Religion. It is not enough to preserve the name of Catholicism, but they must cooperate with the Divine will in their actions, since all power comes from it, so that the life of the Catholic society may be the divine religion, which first prescribes observance of divine law, and second, observance of human private and public law. If princes should fail to cooperate with divine designs and to fulfill their duty, they themselves will ultimately be obscured and pass away, but the divine designs will accomplish their purpose. For God has not established two great powers in vain. "God made two great lights in the firmament," says Innocent III to the Emperor of Constantinople, "the greater to rule the day, the lesser to rule the night; both are great, but the greater light is the ornament of the firmament. This is the universal Church; God made two lights in the firmament, the same. There are two pontifical dignities, which He instituted: one is the authority, the other is the royal power. The former is greater, because it pertains to spiritual matters; the latter is lesser, because it pertains to earthly matters; just as there is a difference between the sun and the moon, so great is the difference between the Pope and kings."

[*Latin ed. p. 321*]

321 LETTERS ISSUED BY ORDER OF THE MOST HOLY LORD, BY WHICH THE SUPREME BISHOPS OF THE CATHOLIC ORBIS IN ROME ARE INVITED For the Solemn Decree of enrolling several Blessed Martyrs, and Confessors, and Virgins, into the list of Saints, at a time when the centennial anniversary is commemorated, by which Rome was glorified with the purple blood of the Holy Princes. Most Illustrious and Reverend Lord: "Among the most important and weighty concerns to which the Apostolic ministry of the Supreme Pontiff is devoted, there is one that is most pleasing, namely, to rightly bestow the honor of Saints, and public worship in the Church, upon illustrious heroes of the Christian Religion, whose death has been precious in the sight of the Lord. Furthermore, after all the acts have been completed by the Sacred Congregation entrusted with preserving the rites, in accordance with the discipline prescribed by the Apostolic Constitutions, and after all the important points have been carefully considered, the Most Holy Lord, Pope Pius IX, has decided that, (provided, however, that the Almighty's hand, as we may hope, may prevent and dispel the storm), in the month of June of the coming year 1867, there will be two public Consistories. And after these have been completed, with the help of God and the Blessed Virgin, on the 29th day of that same month, which is the day on which the feast of the Blessed Apostles Peter and Paul is celebrated

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each year, and moreover, at the same time, that singular event will occur which will be joyfully remembered, namely, the centennial anniversary of that day on which Rome was glorified with the purple blood of the Holy Princes, Blessed Martyrs, Confessors, and Virgins will be solemnly enrolled in the list of Saints, namely: 1. Blessed Josaphat, Archbishop of Poltava, in ReuÃ□, Martyr; Acts, vol. II, part XVII, 21.

[*Latin ed. p. 322*]

322 LITTERS ISSUED BY ORDER OF THE HOLY SEE. "O MOST REVEREND FATHERS, 2. B. Peter of Arbues, of the Order of Regular Canons," of Augustine, Inquisitor of Spain and Canon of the Metropolitan Church of Caesaraugusta, Martyr; 3. B. Nineteen Martyrs of Gorcum, belonging to various Regular Orders, and also to the Secular Clergy; 4. B. Paul of the Cross, Confessor, Founder of the Congregation of Clerics of the Most Holy Cross and Passion of Our Lord Jesus Christ; 5. B. Leonard of Port Maurice, Confessor, Apostolic Missionary, of the Order of the Minor Observance of St. Francis; 6. B. Mary Francis, professed Virgin of the Third Order of St. Peter of Alcantara, in the Neapolitan territory; 7. B. German Cousin, Virgin of the Secular state, in the diocese of Toulouse. "And therefore, to me, who am appointed interpreter and defender of the Holy Council of Trent, it has been commanded by the Holiness aforesaid, according to ancient custom, to deliver these letters to the Most Holy Prelates of the Catholic world, so that I may bring them this most joyous news, and also signify to them the most heartfelt gratitude that those Bishops will render to the same Holiness, provided that, as long as no serious harm befalls the flock entrusted to them, and no other particular impediment befall them, they hasten to this most venerable City in due time for the aforementioned public Consistories, and participate in such a celebration. For it will be pleasing to the Most Blessed Father to see the brethren gathered together, and to pour forth prayers to these most holy celestial patrons, that they, moved by so great a distinction and peril of sacred and civil matters, may obtain from God victory over the malignant enemy, and lasting peace for the Church militant. "Furthermore, it must be noted that this is the intention of the Supreme Pontiff, that whoever shall think to come hither shall be received as if they undertook a journey to Rome, according to the office of visiting the Sacred Limina of the Apostles, as prescribed by the blessed Sixtus V. If the Roman Pontiff should die: and this all the more, because if there is ever a suitable time, it is fitting and delightful to approach and venerate the tombs of the fathers and masters of the truth, Peter and Paul, which illuminate the souls of the faithful (as Theodoretus said).

[*Latin ed. p. 323*]

LIT. EX MANDATO SANCTISSIIMI DOMINI NOSTRI. 323 This journey is one by which the feast day ought to be celebrated, which, according to the

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words of St. Leo the Great, "beyond that reverence which it has deserved throughout the entire world, is to be venerated with a special and proper rejoicing of our city, so that where the glorious end of the principal Apostles is celebrated, there may be a principality of joy on the day of their martyrdom." These things concerning my office were to be made known to you, Most Eminent Lord; after these, nothing remains for me except to express, from the depths of my heart, the particular sentiments of my mind to Your Eminence, to whom I pray that all things may be prosperous through the Lord. "Most Eminent Lord," Given at Rome, from the Sacred Congregation of the Council, on the 8th of December, in the year of the Immaculate Conception of the Most Holy Virgin, 1866. As Brother, FROM THE SACRED CONGREGATION OF THE COUNCIL, CHAPLAINCY. On the 10th of March, 1866. Session 25, chapter 9, concerning Reform. Compendium of the matter. The pious family N. on the 28th of January, in the year 1728, founded a chaplaincy with its own property, with the annual obligation of certain Masses at a designated altar under the title or invocation of St. Elizabeth of the Visitation. In the very instrument of its erection, the founders established this law: "that said chaplaincy, or benefice, or office, shall be a pure pious lay endowment by right belonging to the family N., and shall never be subject to Apostolic reservations, nor to the Regulations of the Chancery, nor ever be a chaplaincy perpetual and collative, but a pure pious endowment or office of Masses, and shall never be transferred."

[*Latin ed. p. 324*]

324. CHAPLAINCIES. "Whether established by the Ordinary, or by the Apostolic See... it is stipulated that the 'chaplaincy,' or benefice for a time (which was to be designated by the descendants of his family), is removable at the will of the founder, 'with or without cause...' They further added that if they were deprived of this right, the land assigned for the chaplaincy would become free, to the benefit of the heirs and successors, who would have the power, in this case, to obtain free possession. In the same month of January, the founders themselves appointed Canon N. as the chaplain; and one of the founders, a Bishop, joined him, and the latter supplicated, after explaining the law of this foundation, that he might be granted a suitable dispensation for the erection of said simple benefice. The supplications were accepted, and the following decree for the erection was issued by the Vicar General: "Having considered the memorial presented to us, and also the following instrument of donation and endowment... in every way, by the best means, law, and form by which it can be done better and more effectively, by the special and express mandate of the Bishop... we have decided to erect the aforementioned chaplaincy as a removable benefice... which we hereby erect, reserving to the aforementioned Lords N. and their descendants... the right of patronage and of presenting to said chaplaincy, or simple benefice, as mentioned above, a removable Rector or Beneficiary,

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as often as the occasion of a vacancy arises..." The Vicar General also issued a decree for the dispatch of bulls in favor of Canon N., who was the first to be appointed to the chaplaincy, and the Bishop, by his authority, solemnly granted him possession of the same chaplaincy. The Curia maintained this procedure in subsequent vacancies of the chaplaincy, at least until the year 1817, in which year, for the institution of a new chaplain, who was not a cleric, the customary letters from the Bishop were not issued. In the subsequent vacancy, the question arose as to whether the present chaplaincy should be considered ecclesiastical or lay. The matter was discussed. WHAT WAS REQUIRED BY LAW FOR AN ECCLESIASTICAL CHAPLAINCY.—Although, upon examining the instrument of erection, the chaplaincy appeared to be a lay chaplaincy...

[*Latin ed. p. 325*]

CHAPLAINCIES. 325 It seemed that it ought to be the case; however, after the episcopal decree of erection, it appeared to be an ecclesiastical chaplaincy. For it is known that such an episcopal decree of erection is commonly the criterion for distinguishing ecclesiastical chaplaincies from lay ones; since, in the erection of a lay chaplaincy, not a decree, but merely a simple acceptance on the part of the Bishop must intervene. Nor was there any obstacle in the case to the instrument of foundation: for the very authors of the instrument themselves had changed their opinion, who, while in the instrument itself they excluded the authority of the Bishop, invoked the same authority for the erection of the chaplaincy, or simple benefice; nor did they afterwards object. This gained strength through the constant observance of nearly a whole century: since all those designated as chaplains by the patrons through papal bulls have been admitted to the possession of the chaplaincy by episcopal authority. Even more so, because the nature of the instituted chaplaincy bore the principal characteristics of an ecclesiastical chaplaincy, such as the designation of the altar on which it was to be erected, the title or invocation of the Visitation of St. Elizabeth, the perpetual obligation of Masses, the assigned endowment, and the designation of the chaplain to be made by the patrons; all of which are qualities that are fitting for an ecclesiastical chaplaincy, as Pitonius argues in *De Contr. Patron.*, section 49.

WHAT WAS BROUGHT FORWARD IN OPPOSITION. — In favor of the lay nature of the chaplaincy, it was observed that the free will of the founders must be held as law. For the will and conditions established at the outset of the foundations must be entirely observed, as the Holy Council of Trent states in Session 25, *De Re For.*, chapter 5, where it is written: "It is fitting that those things which are well established should not be taken away by contrary regulations. Therefore, when certain qualities are required, or certain burdens are imposed, by the erection or foundation of any benefice, or by other constitutions, those qualities should not be

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taken away in the collation of the benefice, or in any other disposition." And in chapter 9 of the same session, it is written: "It is not right to abolish legitimate rights of patronage, and to violate the pious intentions of the faithful in their institution." But in the present case, the founders intended the chaplaincy to be a simple pious endowment, or a *merum* (a simple) official of Masses.

[*Latin ed. p. 326*]

326. CHAPLAINCIES. These can never be conferred by the Ordinary, because a chaplain would be removable at the will of the Patrons, with or without cause; and if the right to confer a chaplaincy were hindered by any ecclesiastical authority, by the same token, the Patrons' dominion over the goods of the chaplaincy would cease. All of these things are unsuitable for ecclesiastical chaplaincies. Furthermore, it was stated that the disposition of the Founders, by which they established the aforementioned chaplaincy at the altar and under the title of the Visitation of Saint Elizabeth, etc., would not be an obstacle. It is known that such conditions can well be suitable for a lay chaplaincy, as is stated in the case of Urbinata, or Arimina. In the deliberations of the Sacred Congregation of Rites on February 3, 1753, in the aforementioned folio, §. Primus reads: "Since the words and will of the Testatrix demonstrate that the lay chaplaincy was not a benefit founded upon it, but... all equivocal arguments that can be deduced either from the words of establishing, presenting, vacating, or from the dowry, or from a certain designated altar, or from the right of the patron, are to be rejected; for these have force in doubt, but not when the will of the Founder is certain, as the Doctors and tribunals unanimously teach. Thus, also, the erection made by the Archbishop is to be rejected, who could not overturn the mind of the Testatrix, nor could the institutions and collations change the true nature and status of the chaplaincy." Regarding the proposed doubt: "Whether the chaplaincy in question is a lay chaplaincy, or an ecclesiastical one, in this case." The Sacred Congregation responded affirmatively to the first part, and negatively to the second. These and other resolutions are in agreement, as in the case of Vilerbien, chaplaincy of November 23, 1765. With all of the above in mind, it remained to be considered whether the decree of the Ordinary could be reconciled with the instrument of foundation, so that it could be considered as an authoritative acceptance of the pious endowment. Otherwise, it was not within the power of the Ordinary to render a chaplaincy, which ought to be a lay chaplaincy, a collated one, contrary to the express law of the foundation. Therefore, in a certain case of Montis, on July 7, 1860, when the Episcopal Curia, with the authority of the Ordinary, and in every other best way, had issued a decree to establish a lay chaplaincy under the title of Saint Sebastian, and a controversy arose regarding the validity of the decree, the Most Reverend Fathers were asked:

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"Whether the decree of the Episcopal Curia of Montis..."

[*Latin ed. p. 327*]

CHAPLAINCIES. 327. It is to be determined whether a certain case pertains to confirmation or infirmation: "They responded: the decree is to be confirmed, according to the acceptance of the pious legate." The doubt is: "Does the chaplaincy pertain to the ecclesiastical order, or rather to the lay order?"

RESOLUTION. – The Most Holy Congregation of the Council, after deliberation on March 10, 1866, judged that the chaplaincy is of a lay nature.

FROM THESE, ONE MAY GATHER:

I. There is a great difference between ecclesiastical and lay chaplaincies. The former are considered true ecclesiastical benefices; the latter, however, are merely pious foundations or pious legacies (1).

II. Ecclesiastical chaplaincies are established by a formal decree of erection, issued by ordinary authority, according to the law of foundations, III. And they are conferred by Episcopal letters, which are called bulls, either of collation or of institution, just as other benefices, whether free or subject to the patronage.

III. On the contrary, lay chaplaincies do not admit of a formal decree of erection, nor can they be conferred by the Ordinary, either by free collation or by institution, although it is the duty of the Ordinary to acknowledge them as existing and to ensure that the will of the founders is fulfilled (2).

V. Although lay chaplaincies often have the appearance of ecclesiastical chaplaincies, they do not change their nature whenever the authority of the Church is excluded from their erection by the founder.

VI. Therefore, the judgment concerning the lay or ecclesiastical nature of a chaplaincy depends entirely on the law of foundation, which either excludes or does not exclude said authority.

VII. Just as a formal decree of erection indicates an ecclesiastical chaplaincy in the absence of a law of foundation, so, when a clear law of foundation exists, which indicates a lay chaplaincy (1).

(1) See what we have said in (2).

(2) See Appendix X, Vol. I, page 634 and following.

[*Latin ed. p. 328*]

328. CHAPLAINCIES. It must be the case that the decree of erection does not operate to the detriment of the chaplaincy (1).

(1) The difficulty that initially presents itself is not of great importance: it is not surprising that the founders of the chaplaincy, who established it during their lifetime, appeared to have changed their intentions, since,

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after the issuance of the decree of erection, they did not object, nor did they oppose the subsequent actions by which the chaplain, designated by the founders, was canonically instituted in the chaplaincy by the Bishop. For the act of institution is performed only in true ecclesiastical benefices, whereby the person designated by the patrons, if nothing obstructs, is admitted to canonical possession. I say that this difficulty is not of great importance, and indeed, rightly so: for the founders approached the Curia not with the intention of changing their will, but to obtain permission, as the law of foundation prescribed. Nor was it necessary for the Curia to instruct the founders as to what they should do, given the law of foundation; nor do lay founders often understand the proper procedure in canonical jurisprudence. The decree, therefore, was issued not because their intentions had changed, but rather in accordance with the instrument of donation and endowment, as can be read in the decree itself. It is not inappropriate here to mention another, if not similar, but parallel case that occurred in Viterbo. On November 23, 1765, a chaplaincy was established. It differs from ours in that the founder ordered the chaplaincy to be established after his death, that is, in a will. The law of foundation, if one considers the matter, is the same as ours, and therefore it is not necessary to refer to it. After the death of the testator, the first chaplain, who had been designated by the testator himself, petitioned the Curia in Viterbo "to erect and establish the aforementioned lay chaplaincy by ordinary authority, and to confirm and institute him as the chaplain designated by the testator, and to issue bulls in his favor, etc." In response to such a petition, a decree of erection was issued with the following words: "By ordinary authority, and with all due consideration, we establish and institute, for the perpetual support and maintenance of the aforementioned chaplaincy, a simple benefice, or chaplaincy, according to the disposition of the aforementioned Peter Bianchi, at the altar of St. Michael Arcangelo in the church of the Brotherhood of the Death, in the city of Centumcellae, and we grant to the chaplain for the time being the right to celebrate three Masses per week at the aforementioned altar in suffrage, and we reserve and grant the right to nominate and present the chaplain, as well as the aforementioned rights, in the manner and form as contained in the aforementioned will, and we confirm and institute the aforementioned Andrea Bianchi, designated by the testator as the first chaplain of this benefice, and we order that bulls be issued in his favor in the usual form, and that he be admitted to the true and corporal possession of the same chaplaincy, with all appurtenances and rights, etc." In favor of Andrea, the same Curia issued letters, by which he took possession. Later, the patrons' heirs protested, and although the Curia argued in its defense that the chaplaincy had been established as a lay chaplaincy by the testator, due to the right reserved to his lay heirs to nominate, which he wanted to be protected and secure; nevertheless, since it was sufficiently clear that the testator intended to exclude ecclesiastical

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authority, so that the benefice would not be a true ecclesiastical benefice.

[*Latin ed. p. 329*]

CHAPLAINCIES. 329 VIII. Neither can a long-standing custom, manifestly arising from a fundamental error, be maintained against the clear law of its foundation. CHAPLAINCIES. December 9, 1865, and March 10, 1866. Session 25, chapter 9, concerning Reforms. From the following case, which is sufficiently comprehensive, we will consider only those matters that may be helpful to the reader. Summary of the case. Pius, the testator, ordered that after his death, a purely lay chaplaincy be established in a certain church, with an altar and an annual income of 60 scudi, and he charged his heirs with establishing suitable endowments, which they amply fulfilled. He also wished that daily Mass be celebrated, with a designated manual alms. He named his descendants, through his daughter, as the chaplains. He also stipulated that such chaplains could use the title of "chaplain" [i.e., *cappellanus*], and if they were called to the ecclesiastical state [i.e., received Holy Orders], they would have the right to appoint a chaplain and to celebrate Mass with the designated manual alms. The testator expressed these and other matters with a certain confusion of ideas. Furthermore, the chaplaincy was established by the heirs in the year 1824. In the year 1860, a certain Titus, a young man from outside the testator's family, who was about to enter the Sacred Orders and who lacked any ecclesiastical patrimony, petitioned the person who was the patron of the chaplaincy, with the following question: "Can a chaplaincy be an ecclesiastical institution, so that its erection by the Ordinary is valid, and its institution be valid in this case?" The Sacred Congregation responded negatively in all respects, and furthermore. On the contrary, it sometimes happens that ecclesiastical courts do not issue a decree of erection, to the detriment of pious intentions and to the prejudice of the Church, when they ought to do so. For example, because a chaplaincy is conferred by patrons, and the laws of patronage are imposed by the testator, it is therefore considered by some to be lay; and if the designation of a chaplain is to be made by the patrons, it cannot be consistent with an ecclesiastical benefit, and benefits of patronage are not true ecclesiastical benefits.

[*Latin ed. p. 330*]

330. CAPELLANCIES. It was stipulated that she should be granted the right to hold it for ten years, in the title of a benefice. She also requested from the Holy Father the grace to be admitted to the sacred orders with this precarious title, and she obtained a rescript with these words: "The Most Holy Father has benignly permitted the Bishop to dispense, provided that the circumstances are truthfully reported to him by the Advocate regarding the lack of a permanent endowment of the sacred patrimony, and to admit him to the sacred orders with the aforementioned precarious title,

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with the condition that within ten years he must provide for himself from another suitable source, so that he may freely be habilitated and be able to do so, according to his own judgment and prudence." The Ordinary, in accordance with the Pontifical Rescript, presented himself to the Advocate, provided that it be established in the records of the Curia that the Advocate had been legitimately nominated and collated, with the condition that he must provide for himself from another suitable source within ten years, under pain of immediate suspension from divine duties. Therefore, Titius obtained the nomination from the Patron, and indeed, a doubt arose as to which of the two was the true Patron; the Curia examined the nomination of both, and both Titius obtained it. Thus, Titius was admitted to the possession of the goods of the chaplaincy, and he was ordained with that title. After the death of the two Patrons, another Patron who succeeded, challenged the validity of the endowment, claiming the administration of the chaplaincy for himself, and brought about sequestrations, so that those who paid the fruits to the Priest Titius, should pay them to the same Patron. This led to the situation where Titius, deprived of the revenues, suspended the celebration of Masses, and insisted with the Most Holy Father that he should not be deprived of the possession of the chaplaincy, removing the impediment caused by the sequestrations. Following the usual procedures, the case was presented to the Sacred Congregation of Rites on December 9, 1865, with these doubts: I. "Whether the Priest (Titius) should be considered to be in quasi-possession of the chaplaincy until the expiration of the ten years in this case." II. "To whom does the administration of the goods of the chaplaincy belong in this case?" However, the Sacred Congregation of Rites postponed its resolution, in order to obtain further information. Investigations were therefore carried out in order to determine whether the chaplaincy was a *merum* legacy of Masses with lands attached, with the obligation to celebrate Masses to satisfy those lands; or rather, whether it had lands that were definitively established and legally constituted as a dowry for the chaplaincy.

[*Latin ed. p. 331*]

CHAPLAINCIES. 331 of the same, and those intestates registered in the same public census records, in such a way that the chaplaincy and the burdens attached to it were constituted as a single entity, similar to a true benefice. Furthermore, it was inquired what had been observed up to the present regarding the administration and collection of the revenues: whether a chaplain had been permanently designated with the right to administer the funds of the chaplaincy and to satisfy the burdens, or rather, whether the Patrons themselves had retained the funds, taking into account the fulfillment of the obligations. From the documents and reports obtained, although there were certain reasons for doubt, whether the aforementioned lay chaplaincy was a mere bequest for Masses, which

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burdened the heirs as administrators of the same, or a lay chaplaincy which had the form of an ecclesiastical chaplaincy; nevertheless, it seemed to be the case that a chaplain had never been appointed by the Patrons, and that they themselves had always retained the administration of the funds, collecting the revenues that remained after the burdens had been fulfilled by designated priests, to whom only a manual alms was given. Therefore, the matter being disputed, the following questions were proposed for resolution: I. "Whether the priest (Titius) should be considered in quasi-possession of the chaplaincy until the end of the decade in this case." II. "Whether and to whom the administration of the goods of the chaplaincy belongs in this case." RESOLUTION. — On March 10, 1806, after the matter was discussed, the Sacred Congregation of the Council responded: To I. Affirmative, regarding the form of nomination. To II. Affirmative, in favor of the Patron. FROM THE PRECEDING, THE FOLLOWING ARE GATHERED: I. That there is a distinction between lay chaplaincies, some of which more closely imitate the nature of ecclesiastical chaplaincies, while others are reduced to mere pious bequests, to which, with funds expressly or demonstrably assigned, the heirs or descendants are burdened. II. That lay chaplaincies of this second type can also be held by laymen, so that these laymen are the heirs or descendants as if they were chaplains, who, through others, after the burdens of the chaplaincy have been fulfilled, make the remaining revenues their own.

[*Latin ed. p. 332*]

332. SUBSIDIES. May 6, 1865, and March 10, 1866. Summary of prayers. Pious spouses, without issue, having departed this life, bequeathed from their respective estates, intending that a chaplain be established in a certain parish church of their town, and that a chaplaincy be founded under the title of Saint Philomena, with due ecclesiastical approval, but excluding that authority from direction and revision. They desired that this chaplaincy be under the immediate direction of the Archpriest for the time being. They established two chaplains, with the duty of assisting the parish priest, who, however, were not to be named chaplains unless the aforementioned chapel had already been built. The first chaplain named was the testator's nephew, N. Presbyter, who was also designated in the will as the first patron, among others. They also named two administrators of the estate, until the chapel was completed. These administrators undertook the duties entrusted to them after the death of the testator, but shortly thereafter relinquished them. The ecclesiastical court appointed others who prepared an inventory and conducted the affairs of the pious cause. Subsequently, after the living testator, the widow, was removed from this life, the aforementioned nephew, N., as the mandatary of his parent, claimed the inheritance, to which the administrators appointed by the court objected. After legal proceedings were initiated in the courts, the nephew, N., finally

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petitioned the Sacred Congregation, either as the designated chaplain or as the patron, so that he might enjoy half of the revenues until the chapel was built, while also fulfilling all the obligations of the Mass, with the obligation of building the chaplaincy with the other half of the estate within a term to be designated by the Holy See. Such petitions were supported by the patron, with the consent of some patrons, and especially because of the great need and the burden of debt owed to brothers and sisters. Certain customary practices were observed regarding these petitions, and specifically, it was said in favor of the patron that, if the patrons were on the verge of poverty, the pious mother Church should generously grant them subsistence subsidies, according to the text in chapter Nobis, concerning the right of patronage.

[*Latin ed. p. 333*]

SUBSIDIES. It is traditionally held that subsidies, not only benefit the Patrons themselves, but also their families and successors, whether related by blood or otherwise, as stated in canon law. As Lambert, in *De Iure Patronatu*, book 3, question 3, and others, have noted. Furthermore, the petitioner was a relative of one of the testators, was chosen to enjoy the benefits of the chaplaincy by the same testator, and finally, belonged to the distinguished family that was originally called to the right of patronage, both in terms of active and passive rights, etc. These and other matters were presented to the Sacred Congregation. On May 6, 1865, the following was decreed: "The Delegate and the General Vicar shall set a term of one month for the Administrator to render an account of the administration, without delaying, in the meantime, the construction of the chaplaincy according to the terms of the will, and the same Vicar shall, as soon as possible, inform the Sacred Congregation of the results. The General Vicar shall submit to the Sacred Congregation, in accordance with this decree, the letters he has received, along with a statement of the active and passive assets presented by the Administrator. However, it did not appear from the letters whether the work of constructing the chapel had been begun or not, in accordance with the laudable decree." The petitioner, however, did not cease his entreaties due to the great distress of the family, so that his prayers for a suitable subsidy might again be heard. The matter was therefore brought before the Sacred Congregation again, and on March 10, 1866, the following definitive response was given: "RESPONSE.—Regarding the construction of the chapel, this shall be completed as soon as possible, either by the current Administrator, or by another Administrator appointed in place of the one who has resigned, by the Ordinary, and after four months, the Ordinary shall present a report to this Sacred Congregation on the state of the construction. Regarding the rendering of accounts for the past administration, this shall be discussed before the appropriate authorities, and in accordance with the law. Regarding the subsidy for the priest (petitioner)

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in the meantime, for a period of six months beginning now, the Administrator shall provide fifteen shillings per month, so I decree."

FROM THE ABOVE, WE GATHER: The duty of the ecclesiastical judge is to undertake the defense of the pious wishes of the testators, and to order their execution.

[*Latin ed. p. 334*]

334. SUBSIDIES. II. Nor does it matter whether ecclesiastical authority is excluded by the testator from the direction and administration of the matter. For whenever administrators, or others designated, do not fulfill what is due according to the pious will, the Ordinary must be the avenger, who, indeed, by law is the executor of all pious wills (1). FROM "S. CONGREGATIONE EPISCOPORUM ET REGULARIUM," NARRATION OF FACTS, SHOWING THE WAY IN WHICH CERTAIN CONTROVERSIES ARISING ON THIS MATTER ARE TO BE EXAMINED. On April 8, 1859, May 17, 1861, September 1, and April 1866. In the illustrious city A. in Italia, there exists a church called S. Maria de Misericordia, and there is an ecclesiastical benefice there, whose rector is called the Prior, and is also commonly, though improperly, called the Abbot. This church was founded by two of the most noble families of that city, along with the buildings annexed to it, and was also endowed with a very ample sum. Therefore, these same families retained the right of patronage over the church and the buildings, and also the right to nominate the Prior. One of these families has completely disappeared, and for...

(1) *Not infrequently it happens that Ordinaries abstain from due diligence in observing pious wills, because they themselves have been excluded in some way by the testators, or founders; nor do they demand an accounting for the same reason, although they have serious reasons to doubt the execution of those same wills. But the Holy Congregation of the Council, according to the decree of the Council of Trent, session 22, chapters 8 and 9, on Reform, insists that in these cases, the Ordinaries fulfill their duty. Thus, another example in the case of a charitable subsidy, discussed on April 1, 1865, when the Bishop complained of the bad administration of a considerable patrimony, intended for charitable subsidies, from which administration he himself had been excluded by the testator; the Holy Congregation, before deciding the case before it, immediately ordered: "Let the Bishop's account be presented as soon as possible." See also the following case, entitled: "Regarding a doubt, etc."

[*Latin ed. p. 335*]

NARRATION OF THE EVENT. 335. Subsequently, the entirety of this right accrued to another family, which still exists to this day. Originally, as is testified, the administration of this church had been entrusted to certain

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Religious men under the rule of St. Augustine. However, with the outbreak of the plague in the year 1348, these men perished and were completely removed. Consequently, the administration fell to a secular Prior, who was assisted by certain Mansionaries and Clerics elected from among themselves, who provided assistance both in divine offices and in the buildings annexed to the church; for within these buildings, a hospital was established, in which a considerable number of poor and infirm were received. Thus, over time, the Supreme Pontiff Nicholas V, on the first of April in the year 1454, issued Apostolic letters, by which he granted to the Prior for the time being, and to his successors and to the presbyters chosen from among them, the faculty of administering the sacraments, and specifically of receiving sacred confessions, both from the poor and infirm received in the hospital, as well as from clerics and laypersons serving the same church and house. After a period of half a century, namely in the year 1600, another Pontiff, Clement VIII, on the 27th of May, issued other letters, by which, in addition to mentioning the right pertaining to the Prior to sit in the synod after the local Ordinary, he granted to the same Prior and to his successors the following: first, that in public functions, he might wear the rochet and habit proper to notaries of the Apostolic See; secondly, that in the church of St. Mary of Mercy, he might wear the mitre with the ring and other pontifical insignia, similar to Abbots who use the mitre and staff; and finally, that he might impart the solemn blessing over the people, using the same insignia. At the time these Apostolic letters were issued, there were still nine Mansionaries, along with their chaplains, and three clerics serving in the church of St. Mary of Mercy. Later, however (the cause of which is unknown), it happened that the poor and infirm were no longer received in those same buildings, and also that, with the exception of the Prior, neither Mansionaries, nor chaplains, nor clerics, and therefore neither laypersons serving, completely disappeared; but only certain individuals were provided with free lodging. And this is the state of affairs that still exists and continues to this day.

[*Latin ed. p. 336*]

§36 NARRATION OF THE FACTS. When the priory was vacant in the year 1828, a certain Peter was appointed to it by a special and extraordinary rescript from Leo XII. By virtue of this same rescript, the Ordinary granted him the faculty of conferring solemn blessings. Then, in the year 1831, Pope Gregory XVI issued another rescript, in which the Pontiff, although granting certain rights to this Peter, nevertheless declared that nothing prejudicial or novel had been introduced by that rescript, either concerning the exemption of the church or against it. Furthermore, Peter, having obtained the benefit of the priory, rendered very great service to the church; indeed, he did not hesitate to incur enormous expenses in restoring the church itself and its adjacent buildings, and in adorning them most magnificently. But

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he also made great efforts to increase the privileges and rights of the same church: for he believed that he could confer tonsures, and he asserted that the exemption, not merely passive, but also active, from the jurisdiction of the local Ordinary, belonged to the priory itself. Therefore, during his lifetime, a dispute arose before the Sacred Congregation of Bishops and Regular Canons concerning the right of conferring tonsures, and concerning the exemption from the Ordinary's power. And after his death, a vehement controversy arose between the Curia and the noble Patrons concerning the obligation of presenting an inventory of the priory's assets, and concerning the rendering of accounts for the administration of the revenues during the vacancy. Given these circumstances, we have come to the decision to examine all the controversies here, following the chronological order, as they have been presented to the Sacred Order. The first matter that arises is that of the TONSURE. On April 8, 1859, the Bishop of the diocese of NN., which was not far from the diocese in which the church of Saint Mary of Mercy, of which we have spoken, is located, having in 1858 before the Sacred Congregation of Bishops and Regular Canons, contested the aforementioned Peter, now called Abbot of the church.

[*Latin ed. p. 337*]

TONSURE. 337. He stated that he had conferred the tonsure upon a certain young man, who, by reason of his origin, was subject to the Bishop of Orense. However, he claimed to be unaware whether Peter possessed the pontifical privilege to confer the tonsure. Furthermore, he asserted that, even if Peter did possess such a privilege, the Ordinary's jurisdiction had been violated by the same Peter, who had ordained a subject belonging to another diocese. Therefore, the Sacred Order inquired of Peter, by what authority he had dared to bestow the tonsure upon the young man, and to ordain a subject belonging to another diocese. It must be noted that all of these matters concerning the canonical history of the aforementioned Priory had not yet been discovered and examined when these events transpired; indeed, the Holy Congregation learned of these matters on a subsequent occasion, when other causes were investigated and judged, as we shall mention below. Furthermore, Peter wrote to the Holy Congregation, stating that he possessed the right to confer the tonsure by reason of certain apostolic letters from Nicholas V, dated 1454, of which we have already made mention. He added that the young man in question, being completely destitute of fortune, had left his homeland by decree of the civil authority, and had established his residence in that Priory. These matters, having been communicated to the Bishop of Orense, who had jurisdiction over the young man, the Bishop declared that the young man had presented a cause of complaint because of certain rumors circulating among the people, and had therefore departed from that place. However, Peter contended that Peter himself could not have conferred the clerical tonsure upon the young

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man, neither by reason of his origin, as was evident, nor by reason of his domicile (for he lacked the necessary property and had not resided there for ten years), nor finally, by reason of the three years of familiarity with the Prior, which are necessary in order for one to be able to confer ordination, as is stated in the well-known Constitution of Innocent XI, beginning with the word "Speculatores." Indeed, it was proven that the young man had left his homeland in violation of the law, in order, as it were, to receive the sacred tonsure, and furthermore, that he had presented to the Prior the letters of dismissal from the Bishop of Orense (which were necessary) before the tonsure was conferred. Therefore, he requested that the conferral of the tonsure be declared null and void, and that the penalties established by canon law be imposed. Acts, vol. U, fol. XVIII, 32.

[*Latin ed. p. 338*]

338. The Holy Order, in this situation, addressed itself to the Ordinary of the place, where the church of Saint Mary of Mercy was located, recounting the matter and requesting that the alleged privilege be shown to him, and simultaneously that it be confirmed that it had not been revoked by the Council of Trent, as taught by Benedict XIV in *De Synodis Diœcesanibus*, Book 1, chapter 1, number 9; or at least that it had been granted anew by the Apostolic See after that Council. The Prior responded to the Ordinary that he had first requested, from the Apostolic See (which his predecessors had not done), to receive the blessing from the Ordinary, according to what is taught by Benedict XIV in the aforementioned passage, number 9; and therefore, he had also first received the power to confer the tonsure and the minor orders, a power which he used when he gave the clerical tonsure to the young man in question. However, regarding the asserted privilege, he remained completely silent. The Ordinary, having faithfully renounced the authority of the Holy Order, left the definition of the matter to his own free judgment.

Synopsis of the Discussion: WHAT HAS BEEN PRESENTED IN THIS MATTER BY AUTHORITY. – It should be noted, first, that in chapter 10, session 23, concerning ecclesiastical matters, of the Council of Trent, it was decreed: "To Abbots and to all others, whatever their exemption may be, it is not permitted, while residing within the boundaries of any diocese, to confer the tonsure, or the minor orders, upon anyone who is not subject to them, even if they claim to be exempt from any diocese." Now, concerning our matter, Benedict XIV, in *De Synodis Diœcesanibus*, Book 2, chapter 9, number 9, discussing the aforementioned decree, states as follows: "Since, however, the Council of Trent left to Abbots, whatever their exemption may be, only the power to confer the first tonsure and the minor orders upon their own subjects, and since Secular Abbots, however much they may enjoy exemption, do not preside over Regular canons, it necessarily follows that they cannot promote anyone, although subject to their jurisdiction, to

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the first tonsure or the minor orders, unless they have obtained this power from the Apostolic See after the Council of Trent." Now, the Prior of the church of Saint Mary of Mercy presented nothing other than the Apostolic letters of Nicholas V, that is, those issued before the Council of Trent.

[*Latin ed. p. 339*]

TONSURE. 339 Indeed, from what has been stated, everyone can easily see that there is no privilege granted to the Prior Peter for conferring the tonsure; therefore, that young man was illicitly and invalidly tonsured by him, according to the teaching given on this matter by Benedict XIV, 2, c. But he who has the task of writing consultations proceeded further, inquiring what consequences would follow if the Fathers were to respond that a certain privilege did indeed exist. In this, the opinion of the same Pontiff was cited, who teaches the same thing in the same place: "If, indeed, someone (namely, in the case where the Abbot enjoys the privilege of conferring the tonsure, but does not confer it upon his subjects) illicitly confers the first tonsure and the lesser orders, even upon others who are not otherwise included among the persons designated in the privilege—nevertheless, the tonsure of the lesser orders is considered valid—it must be noted that this opinion of Benedict XIV, according to which the conferring of the tonsure and the lesser orders is considered valid, is subject to exception, because the Sacred Congregation of the Council seemed to have maintained in the following time that the conferring itself was not only illicit but also invalid, as can be seen in one Congregation of Olivelana, September 30, 1788, and especially in Collen. January 24, 1795, in which this article is discussed. This matter is also discussed in the work most recently published by our printers, De VV. SS. LL., Vol. 1, § / / / , n. 30-36, pages 55 and following. Regarding the penalties that both the Prior and the young man should have incurred, it was stated that Chapter 8, session 23, of the Decrees [Decretales] concerning Reform, establishes: "If this is done contrary to what was decreed there (namely, if orders are conferred contrary to what was decreed there), the one conferring the orders shall be suspended from conferring orders for a year, and the one receiving the orders shall be suspended from exercising the duties of the orders received, as long as it seems expedient to his proper Ordinary." However, I observed that the application of this chapter could take place in the case where it had been established that the Prior was endowed with the privilege of conferring the tonsure, and he conferred it upon a subject who was not his own; but not if the Prior were declared to completely lack this privilege. For in this case, no penalty (which would at least strike at the particular case) was found that was designated by common law, and therefore it was fitting that both the Prior and the young man should incur a penalty, according

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to the judgment of the Judge, in accordance with the fault, as an example.

[*Latin ed. p. 340*]

340. TONSURE. The matter was brought up, as indicated in Chapter [reference to a chapter], concerning the duties of the Archdeacon, and also from the resolutions of the Sacred Congregation cited in the proceedings of the Olivetan and Cologne Councils. With these considerations presented, the following doubts were to be resolved. I. "Does a privilege exist, granting the Abbot of the church of Saint Mary of Mercy the power to confer the tonsure and the minor orders...?" In this case, the answer is negative. II. "Should any action be taken, and if so, what kind?" RESOLUTION. On April 8, 1859, the Most Reverend Fathers responded as follows: To Question I: Negatively. To Question II: There should be no conferring of the tonsure and minor orders, insofar as they have been conferred by the Abbot, and the [young man] must be compelled to relinquish the clerical habit (by the local Ordinary, to whose jurisdiction the aforementioned church belongs), who shall impose upon both a salutary penance according to his prudent judgment, and the resolution shall be notified to the Bishop (of the diocese). After having informed His Holiness of the aforementioned matters, His Holiness, during an audience held on the same day, approved and confirmed the resolution of the Sacred Congregation, and furthermore granted (to the local Ordinary) the power to absolve and dispense both the Abbot and the [young man], after they have fulfilled the salutary penance imposed upon them by the same (Ordinary), from any ecclesiastical censures and penalties incurred due to the aforementioned circumstances. Contrary opinions are to be disregarded. FROM THIS, THE FOLLOWING CAN BE GATHERED: I. That for the effect of a sacred ordination, some dependence on a Bishop can arise, based on origin, benefice, domicile, and familiarity. II. That the privileges granted by the Council of Trent, which had been granted to Regular and non-Regular Prelates, to confer the tonsure and minor orders to their Regular subjects, were revoked from the Regular Prelates and restricted to their Regular subjects, privileges which they had previously enjoyed. III. That in any subsequent privilege granted for obtaining a blessing from the Bishop, in the manner of Abbots, or even for wearing the mitre and crozier, the specific privilege of conferring the tonsure is not included (1). (i) In the case of the Abbot of Saint Peter and Saint Paul of the Order of Regular Canons, which was proposed on April 3, 1745, and decided on September 17, 1746...

[*Latin ed. p. 341*]

TONSURE. 341 IV. The tonsure and lesser orders conferred by an inferior prelate who does not possess such a privilege are not only illicit, but also entirely null. V. He who has received such a tonsure and lesser orders may be compelled to relinquish the clerical habit. VI. Both he who

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conferred the tonsure and lesser orders, and he who received them, shall be subjected to salutary penance by the Apostolic See, before any absolution and dispensation from the censures and penalties incurred are granted. EXEMPTIONS. On May 17, 1361, Peter, Prior of the church of St. Mary of Mercy, did not yield to the adverse resolution which he ought to have followed in the past; rather, he seemed eager to seize an opportunity to raise his mind higher, and to actively seek an exemption from the jurisdiction of the local Ordinary, as if he were to be considered a Prelate of Nullius, as they are called. In a petition presented to the Most Holy Pope and the Sacred Congregation, he offered numerous arguments in confirmation of his purpose, most of which we have mentioned above, while others, being of lesser importance and largely not conducive to the intended effect, we have deliberately omitted. He particularly cited the Apostolic Letters of Nicholas V, dated 1454, in which that Pope granted the Prior of St. Mary of Mercy the faculty to determine whether he himself could confer the first tonsure and lesser orders upon his subjects according to their regulations; and although his predecessors (to whom the faculty to use the mitre and staff and other pontifical insignia, according to the custom of Abbots of the Regular Order, had been graciously granted by Innocent XII), had exercised all the things that are called pontifical, they nevertheless abstained from conferring the tonsure and lesser orders. Regarding the question: "Can the Abbots of the monastery of SS. Peter and Paul at Weyarn confer the first tonsure and lesser orders upon their subjects according to their regulations?" The Sacred Congregation responded: negatively, and furthermore.

[*Latin ed. p. 342*]

342. EXEMPTION. The church, along with its attached dependencies, and the priests elected from within it, were able to administer the sacraments to the sick, the poor, and the laity serving in the house. Subsequently, reference was made to other Apostolic letters of Clement VIII, dated 1600, by which the aforementioned Prior was granted the power to wear the rochet and the distinctive habit of the notaries of the Apostolic See, to wear the mitre, the ring, and the pastoral staff within his own church, and finally, to impart the solemn blessing upon the people there. However, the Fathers of the Council did not deem it fitting to grant this exemption to the aforementioned Prior, strictly according to the law; at least, they requested that, as a favor, this privilege and this significant prerogative of the church, namely that of the Most Holy Mary of Mercy, be granted by the indulgence of the Apostolic See. However, the local Ordinary opposed this, asserting his ordinary authority over the same church, based on numerous and very solid reasons, the most important and primary of which was that the Prior of that church, before assuming possession of the benefice, had always been accustomed to receive canonical institution from the local Ordinary, with

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the exception of the last Prior (namely, Peter himself), who had obtained the priorate benefice outside of the ordinary process by a special rescript from the Pope. Therefore, after hearing all the arguments, and also considering the earnest request of the neighboring Bishop, so that the Sacred Order might obtain more accurate information, a double question was proposed in the plenary session of the Fathers of the Council, as can be read at the end. Synopsis of the discussion. WHAT DOCTRINES CONCERNING THE ARGUMENT PROPOSED IN THE FIRST QUESTION SHOULD BE EXPLAINED? — Firstly, the most common distinction was presented, dividing superiors, or Abbots, into three species: The first species (as Benedict XIV states in *De Synodis Dioecesanis*, Book 1, Chapter 11) consists of those who preside over a certain class of persons existing within the confines of a church or monastery, with passive exemption from the jurisdiction of the Bishop. Such are the Regular superiors, who, along with the church and its clergy and administrators to whom they are assigned, are immediately subject to the Roman Pontiff. The second species consists of superiors who have active jurisdiction over the clergy and people of a certain place, but that place is within the territory of the Bishop.

[*Latin ed. p. 343*]

EXEMPTIONS. 343 dioceses: from which it is entirely surrounded; and such prelates are improperly, and in a certain broad sense, said to belong to no diocese. The third type is of prelates who have active jurisdiction over the clergy and people of a certain place or town, or of several places and towns, which are entirely detached and separated from any bishop's diocese. Therefore, they are said to constitute a kind of diocese, in which the prelate, except for those of the episcopal order, exercises all that which would otherwise pertain to the episcopal jurisdiction. Prelates of this type are among the most distinguished of the lower ranks, and are truly and properly said to be of no one, and are counted among the Ordinaries of the place. After these, several things must be considered regarding the distinction that exists between passive and active exemption; the latter is divided first into semi-plenary, and then into plenary, as is that described by Benedict XIV in the passage cited below concerning the third type of prelates: and this was maintained by the Prior of St. Mary of Mercy to pertain to it. Therefore, turning to the subject in question, it was observed to be threefold. This division was explained somewhat more fully for the very purpose that it might be determined whether any of these belonged to the Prior. Therefore, the first is called native, and this arose from the original distinction of all dioceses, and therefore belongs only to bishops. See *Ad Petram* to Const. IV, *Calixli III*, section II, 11, 2 and following. The second is called given, and is granted by the Supreme Pontiff through a special privilege; this privilege, however, must be manifestly and clearly established; see Ben. XIV, Const. Apostolicae servitutis, § 2, March 11, 1743,

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and elsewhere; if this is not the case, a presumed and ambiguous privilege is not considered. The third type is called prescriptive, and derives its origin and efficacy from prescription. To acquire this (if, indeed, we are speaking of plenary exemption), absolute prescription is required, endowed with all the conditions prescribed by law, and communicated. This, as was declared and sanctioned in a particular Congregation appointed by Clement XI on January 3, 1721, in a discussion of the matter in question. See Ben. XIV, *De Syn. dioec.*, book 13, chapter 5, n. 18. Then, turning to the factual aspect of the matter, the first thing that came to mind was that particular circumstance.

[*Latin ed. p. 344*]

344. CONCERNING EXEMPTIONS. The Ordinary stated that, namely, the Priors of the monastery of Saint Mary of Mercy, through episcopal bulls, just as is the case with other minor benefices, had, from time immemorial, been granted new rectors by the local Curia. Indeed, Prelacies and Abbeys, whether considered as major benefices or as dignities, are not conferred by the Bishop, but by the Pope himself. See Gonzalez ad Reg. 8 Canon. De alieni, and mens. glossa 9 § . 1 n. 38. The Apostolic letters, both those of Nicholas V. and those of Clement VIII., did not present any argument that seemed suitable for the matter. For the privileges granted by Nicholas V. to the Priors, as was the case with other similar privileges, were abrogated and revoked by the Council of Trent, Session 23, Chapter 15, concerning reforms, privileges, and even immemorial customs. S. C. Conc. apud Petram I. cn. 51 et 52. Nor could greater weight be given to other letters of Clement VIII; for those privileges were merely honorific and did not involve any real exemption, as is clearly stated in Benedict XIV, in Const. Causarum §. If, on November 15, 1747. The arguments, which were put forward in favor of granting an active exemption, since we have noted that they were very weak, we refrain from listing them.

WHAT WAS DISCUSSED REGARDING THE SECOND POINT. If the Eminences had responded that there was no basis for granting an exemption, Prior Peter pleaded that it be granted to him out of grace. For this reason, he extolled the antiquity and nobility of the church; then he showed the costly renovations and decorations of great value that he had never ceased to carry out in that church and in the adjoining building since he first obtained the office of Prior. These things seemed to make the church and the person of the Orator worthy of being granted this special privilege. However, it was pointed out that such privileges are rarely granted by the Apostolic See. Then the local Ordinary, whose authority should have restricted this matter, strongly opposed it; indeed, he considered it more harmful than anything else, as far as ecclesiastical discipline was concerned. Indeed, in all matters, and especially in this one, the Apostolic See takes into account the opposition that may arise from the Bishops. As an example,

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the case of the Abbey of Fontes Vivi in Parma was cited, which was brought before the Sacred Congregation on December 19, 1801.

[*Latin ed. p. 345*]

EXEMPTIONS. 345. After these things have been explained, the doubts are to be resolved. "Whether and how is the Prior Abbot of the monastery of *S. Maria de Misericordia* exempt from the jurisdiction of the Bishop (of the Diocese of NN)?" Answer: Negatively. II. "Whether and how should one petition the Most Holy Fathers, so that they may deign to grant the privileges mentioned above?"

RESOLUTION. The Most Holy Fathers replied on May 17, 1861, as follows: To I, negatively. To II, also negatively, and with the following understanding (1).

FROM THE ABOVE, ONE MAY GATHER:

I. That there are three kinds of inferior prelates, or Abbots.

II. That inferior prelates, or Abbots of the third kind, namely, those who possess ordinary authority with a people and a territory separated from others, are truly and properly said to be *Nullius dioeceseos* (belonging to no diocese).

III. That active exemption from the jurisdiction of the Bishop is divided into native, granted, and prescriptive.

IV. That the privilege of a granted exemption must be clear and manifest.

V. That a necessary condition for a prescriptive exemption is that it be rooted in an ancient custom, which is endowed with all the requirements prescribed by law.

VI. That various privileges of exemption from the jurisdiction of the Bishop were granted before the celebration of the Council of Trent, but were revoked by the Fathers of that same Council.

VII. That the privilege of wearing the mitre and of wearing pontifical vestments with other insignia does not imply active exemption.

VIII. That the privilege of active exemption from the ordinary jurisdiction of local Bishops is usually granted only by the Apostolic See for very important reasons.

(1) The understanding (which was not to be declared in the resolution of the doubt) consisted in this: that the Sacred Congregation, through letters, would commend the Prior's zeal in restoring and beautifying the House of God with ample praise.

[*Latin ed. p. 346*]

346 CONCERNING A QUESTION PROPOSED REGARDING THE INVENTORY AND ACCOUNTING OF BENEFICIAL GOODS. On

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September 1st, 1815, and March 9th, 1866. Approximately three years after the cause concerning the exemption, which we have just mentioned, had been pending before the Sacred Order of E.P. and R., Peter, the prior of the church of Saint Mary of Mercy, entered the grave year of his life. However, despite this, new points of contention did not cease; it is not possible to recount them all here, but we will only address and report those that can be of some benefit to the reader. When, therefore, the priorate benefice became vacant, the noble Patrons, by public notification, invited competitors to present testimonies of the qualities prescribed. After these proceedings, a formal act of nomination was carried out in favor of a certain person, who, for several reasons, was deemed most worthy. At the same time, certain conditions were added, to which the nominated person readily agreed and subscribed. However, the ecclesiastical court, in accepting these conditions, discovered certain irregularities, which seemed to require pontifical sanction. But this matter was not of such great importance compared to two other doubts, which, before the Ordinary could canonically institute the nominated man, were considered to require resolution by the Apostolic See; therefore, the Sacred Congregation of Bishops and Regulars was petitioned for a timely resolution. One of these doubts concerned whether the Ordinary himself had the right to ascertain the status of the beneficial goods; the other concerned whether he could demand that the Patrons render an account to him regarding the administration of the priorate benefice during the vacancy. These two, in other words, amounted to inquiring whether the ecclesiastical court could investigate the inventory and accounting of beneficial goods. Both of these doubts may perhaps seem of lesser importance; nevertheless, they are not to be considered insignificant, since both relate to the truth of the law. Therefore, it is necessary to know the facts concerning this matter.

[*Latin ed. p. 347*]

ON A DOUBTFUL POINT. 347 Whereas, although from the fifteenth century until the entire eighteenth century, without interruption (as evidenced by the records of the Chancery), the Priors had customarily obtained from the ecclesiastical court the bulls of canonical institution and investiture, and furthermore had been admitted by the Patrons into possession of the benefice, nevertheless, neither these Priors nor the Priors themselves ever delivered to that same court an inventory of the honors which constituted the endowment of the benefice, so that no document or record on this matter existed there. Furthermore, by an ancient and unmemorable custom, it had peacefully been observed that whenever the benefice became vacant, the goods of the vacant benefice were administered by the Patrons themselves, and the fruits were applied primarily to the fulfillment of the burdens of the benefice. Consequently, the Ordinary was in a twofold dilemma, namely, whether this custom could be main-

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tained in both respects. The matter was debated separately, first concerning one aspect, and then concerning the other, in the customary consultations. A summary of the arguments. CONCERNING THE INVENTORY OF BENEFICIAL GOODS. It was first brought up that Sixtus V, in his Motu proprio, beginning with "Provida Romani," dated April 29, 1587, had provided that in all dioceses throughout Italy and the adjacent islands, a special archive should be established, in which duly completed inventories of all the goods belonging to places subject to its own jurisdiction should be preserved. Furthermore, this Sixtine decree has two parts; the first part concerns the courts and other institutions to which the burden is assigned of establishing this archive; the second part concerns the persons who are obligated to send inventories of ecclesiastical goods to this archive, among whom the possessors of benefices hold a prominent place. It should also be noted that those who are exempt from the episcopal jurisdiction and are immediately subject to the Apostolic See are not excused by this law. This Sixtine Constitution received a certain confirmation from Benedict XIII in the Constitution, beginning with "Maxima vigilantia," dated June of the year 1727. Angelus Lucidi, the author of the most recent work on the Holy Canon Law, Vol. I, page 233, note 244, speaks of both Constitutions, and indeed, he presents both at length in Vol. III, page 129 and page 146.

[*Latin ed. p. 348*]

348 CONCERNING A DOUBT RAISED. With these premises established to exclude the obligation of presenting an inventory, it was observed in the episcopal court, concerning which the matter was, that the Priory of St. Mary of Mercy had been declared, by letters of Nicholas V. in the year 1454, as mentioned above, to be a "Praesulatus" or Abbey, and in no way subject to any jurisdiction. Although, indeed, by the Council of Trent, certain specific powers had been taken away, nevertheless, whatever the Fathers of Trent did not expressly mention or forbid remained in force. Therefore, everything that involved acts of jurisdiction was not taken away from the Prior of St. Mary; and in fact, the ecclesiastical court had never dared to exercise this right for so long a time, nor in the Sacred Visitation, which the Ordinary had never attempted to carry out in the church itself. Furthermore, such a presentation of an inventory was considered useless and superfluous, since in the church of St. Mary of Mercy, there existed a Prioral archive, in which all the acts and writings pertaining to it were faithfully kept. On the contrary, it was maintained, using the very words in the Sixtine Motu Proprio, that those who are exempt from episcopal jurisdiction and are immediately subject to the Apostolic See are also obligated to present an inventory. Although this could not be said of the Priory of St. Mary, as appears from the preceding resolution; nevertheless, since the court had the right to impart canonical institutions, it followed that it could demand an inventory of the goods of those whom the Prior

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received into his possession; and this would not be prevented by the fact that the church of St. Mary had its own archive: for this is the case with Chapters of Canons, and other sacred institutions, and yet they are nonetheless subject to the law of presenting an inventory. CONCERNING WHAT WAS ALLEGED REGARDING THE RENDERING OF ACCOUNTS. It should be noted that, according to the older discipline of the Church, patrons may have had the right to intervene in the administration of the goods of benefices, as can be gathered from Cap. "Cum vos," 4 of "De offic. Ord.," Fagnanus in this chapter. But the Council of Trent, in other places, and especially in Cap. 9, Session 25, "De Ref.," severely forbade these same patrons from interfering in the collection of the fruits of their benefices, and in their disbursement, notwithstanding any custom, imposing suitable penalties against those who violate this sanction. From these premises, it seemed to follow that the custom, although very ancient, which held that patrons of the Priory of St. Mary...

[*Latin ed. p. 349*]

ON A QUESTION RAISED. 349 At the time of the institution, if the administration of the prioral goods could be contrary to the disposition of Trent, then it ought to be abolished. However, on the other hand, it was noted that the Fathers of Trent, in Chapter 3 of Session 24 on Reform, likewise forbade patrons from interfering in patronal benefices, except to the extent that it pertains to them by the institution and foundation. Indeed, although the original decree of foundation may be lacking in certain details, nevertheless, from time immemorial, it has been the custom that, during a vacancy, the patrons administer the prioral goods. It is, however, certain that an ancient custom is not considered to be abolished by the decrees of the Council of Trent, unless it has been expressly derogated from in express words, as Panimolle states in his Annotations, 10, year 23, and following; and in the Decree of the Sacred Rota, 585, number 2, before Seraphim, and generally by the Doctors. If it seemed to the Fathers that a custom of this kind could be maintained, then the question would arise as to whether they were at least obliged to render an account regarding the administration of the prioral goods. Indeed, in the celebrated Chapter 9 of Session 22 on Reform, it is established that all administrators of ecclesiastical goods are bound to render an account to the Ordinary. Moreover, the commentators generally teach that any contrary customs, even ancient ones, were abolished by such a decree. See Fagnan, in his commentary on Chapter 3, on the subject of "Res Domini," numbers 4 and 5, where several declarations of the Sacred Congregations on the matter are cited. However, the Fathers of Trent placed this limitation on this disposition, namely, unless, perhaps, it had been expressly stipulated in the institution and ordination of such a church or foundation – which must be understood with the proviso that the right of the Ordinary remains in the case of negligence by the administra-

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tors in fulfilling the will of the testator – Sacred Congregation of the Holy Council, in the case of Bononiensis, regarding the rendering of accounts, dated March 2, 1839. It must also be noted that if, by privilege, custom, or other constitution, an account is to be rendered to a certain group or person, then the same Ordinary must be consulted in the rendering of accounts. See Pignatti, Consultations, 15 volumes, 7, number 36. The aforementioned author, in his work "De VV. SS. LL.," Volume 2, in Article 2, pages 459 and following, writes extensively on this subject of rendering accounts. It should be noted that, pending the outcome of the case, the Ordinary, by a rescript of the Supreme Pontiff, continuing to make his prayers in this regard, is authorized to—

[*Latin ed. p. 350*]

350 CONCERNING A DOUBT PROPOSED. It was granted that the newly elected one might establish a new administrator for the priory, and remedy any defect; although (as was later discovered) the Ordinary had not at all used this power. Meanwhile, this matter was considered concluded; therefore, the judgment of the Fathers did not consider this a relevant point; and thus, the controversy was limited to the obligation of presenting an inventory and accounts: the administration was to be rendered by the general, following the formula for doubts. DOUBT: "How should one respond to the question (of the Ordinary NN.)?" RESOLUTION? The Fathers of the Order, on September 1, 1865, after discussing the matter, responded: "While the right of the Curia remains firm to grant canonical institution, in all other respects, the established custom shall be observed." CONTINUATION OF THIS CASE. After this resolution was issued, the Ordinary again requested to be heard, and he obtained it. Since the Sacred Congregation had presented new arguments, it was understood that the same Rescript of the Supreme Pontiff, which we mentioned earlier, had not been ordered for execution, because they believed that their rights were being harmed by this. Hence, the matter was again submitted to the judgment of the Fathers of the Order, with a faithful and accurate account of all things, as can be read at the end. It should also be noted that the newly elected Prior was accused of having intruded into the administration of the priory's goods, before having received canonical institution from the Curia. In this matter, the following laws were cited, which are established against those who, not having received canonical institution, do not hesitate to intrude into a benefice: cap. 5 on the blindness of avarice concerning elections and elections, in the collection of decrees; and in Ferraris V, Beneficium, Art. VII, no. 19. Although it seemed that this could not be asserted against the newly elected Prior, since, even if he had undertaken some act of administration, it appeared from the records that he had certainly done so because he had been granted this power by the Patrons, who, by an ancient custom, were in possession of the right to

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administer the goods of the benefice, and therefore were not prohibited from lawfully delegating this power to another.

[*Latin ed. p. 351*]

ON A QUESTION PROPOSED. Exposition of Doubts. I. "Whether and how one should depart from the resolution of September 1, 1865, in this case." II. "Whether and what determination should be made concerning the delegation imparted to the Ordinary, NN., and concerning the interference of certain persons with the newly elected [individual] regarding the Priory in this case." RESOLUTION. — On March 9, 1866, the Most Reverend Fathers, after discussing the matter, judged it fitting to respond as follows: To I. In the decisions, according to the manner: namely, the right of the Curia remains firm... to grant the canonical institution, relating to the administration, which, when the Prior is absent, the Patrons are accustomed to have; the custom should be observed, but in such a way that any new Beneficiary of the Curia... must be obliged to deliver an inventory, and the Ordinary in the case of negligence of the Administrators can demand an accounting from them: and furthermore. To II. Affirmative, and it should be requested of the Most Holy [Father] for the healing [of the situation] in favor of the Reverend NN., so that he may be granted the canonical institution, to which (the Ordinary) may proceed with his ordinary authority. FROM THESE, ONE MAY GATHER: I. That each Curia in Italy and the adjacent islands should have a register, in which inventories of goods belonging to Churches, benefices, pious places, and other institutions should be kept (i). (1) Sixtus V, the Roman Pontiff, contemplated establishing a general ecclesiastical archive, in which all inventories of things, goods, and rights, and of documents pertaining to churches and pious places established throughout Italy, would be stored and preserved in the Apostolic Palace. However, he abandoned this plan due to serious difficulties and grave inconveniences that were foreseen to arise from it. Nevertheless, the Pontiff did not abandon his preconceived plan entirely, but provided for it in another way, as can be seen in the aforementioned papal bull, which is cited in Appendix Concilii Romani, chapter I, title XII, and following sections of the same Council. After the Roman Council, Benedict XIII, keenly aware of the damage that would result to churches and pious places from the neglect of archives and inventories, carefully considered this matter of archives and inventories in a solemn Constitution which begins: "Maxima vigilantia," on July 18, 1727, and ordered that those things previously mentioned be observed, under the sanction of penalties. See also Angelus Lucidi in the aforementioned work and passages cited.

[*Latin ed. p. 352*]

352 CONCERNING A DOUBTFUL POINT. II. According to the most recent law, Patrons cannot interfere in the administration of the goods per-

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taining to benefices (1). III. However, it is maintained that an unforgettable custom exists, whereby Patrons administer the benefices when the benefice is vacant. IV. In the case of at least the negligence of Patrons, the Ordinary can demand an accounting from them, if otherwise this would not be his right. V. Before a canonical institution and the beginning of possession, it is not permitted for the Beneficiary to intrude into the administration of the goods of the benefice. JURISDICTIONAL DECISION. On May 29, 1888. Summary of the case. A religious testator left two pious bequests in favor of a certain pious Sodality. After the Testator's death, and on the day when such bequests were to be paid, the pious Sodality brought suit against the heirs in a secular tribunal, in order to compel them to satisfy the aforementioned bequests. The secular tribunal received the summons, but, doubting the competence of its tribunal to judge in this pious cause, it asked the Sacred Congregation for Immunity whether it could proceed in judging the case. After hearing, as is customary, the report of the Bishop, and after considering the rights alleged by both sides, the following are the arguments presented. ARGUMENTS PRESENTED IN FAVOR OF THE SECULAR TRIBUNAL. The secular tribunal cited the authority of several canonists to demonstrate that pious bequests are matters of mixed jurisdiction, and therefore a place is granted for the prevention [of abuse]. The Abbot in Chapter [citation missing]. "If heirs, concerning testaments, the nature of the case being stated as follows: 'Certain heirs have disregarded the will of the Testator (!)'" See also regarding Emphyteusis, vol. I, p. 228.

[*Latin ed. p. 353*]

ADJUDICATION OF THE FORUM. 353 They did not wish to fulfill [the testator's wishes]: which was reported to the Lord Pope, who responded that if the heirs do not fulfill the commands of the testator, then by the Bishop of that place, all things which have been left to them shall be canonically withheld, with their fruits, and other emoluments, so that the wishes of the deceased may be fulfilled. The Abbot of Panormitanus notes the following: "Note 1st, that it pertains to the heirs to fulfill the commands of the deceased... Note 2nd, that for the fulfillment of the will of the deceased, all hereditary property may be withheld from the negligent heir, with its fruits and emoluments. Note 3rd, that it pertains to the ecclesiastical judge to ensure that the wishes of the deceased are carried out." He adds: "However, I say that this is a mixed forum, because even a secular judge can perform his office, even in legacies to pious causes, as in the Authority on the Church, title, §. If someone has made a bequest for the building [of a church], and in the Authority, this is further explained in the Code of Testaments, I believe that this is a place for prevention between these judges, which I have noted that I said in chapter. Because it is generally about the competent forum." Diana, paragraph 6, treatise on Testaments, resolution 39, § 1 and 2, asks: "To which judge does the execution of the testament for

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pious causes, and of the pious legators, pertain?" After citing other authors, he responds: "The cause of pious legators, when the heir who is bound to fulfill it is a secular person, is a mixed forum. Because the defendant should regularly be summoned in his own forum, it is possible to appeal before a secular judge, as appears from chapter. The report shows that there is a conversation with secular officials in Vellestrens. Because the matter in question concerns a supernatural end, to which the Church's judgment pertains, it is also possible to appeal before an ecclesiastical judge." This is the opinion of other, more authors who were cited.

REASONS PRESENTED BY THE ECCLESIASTICAL COURT IN ITS FAVOR. The episcopal court, after stating the decree of the 8th session, 22nd of the Council of Trent, which states: "Bishops, even as delegates of the Apostolic See, in cases permitted by law, are executors of all pious dispositions, both in the last will and testament and made during life;" and after the teaching of Benedict XIV, De Syn. I, 13, chapter last, which distinguishes between simply pious legacies and religious legacies. A simply pious legacy is understood to be that which is left without any burden, such as, for example, a legacy for a dowry, alms, and the like. But a religious legacy...

[*Latin ed. p. 354*]

354. REGARDING THE JURISDICTION. It maintained that those matters pertaining to religious endowments should be handled by the ecclesiastical court, as they involve obligations related to works that directly concern the religious life and the divine worship. Having established this distinction, the court believed that it could reconcile two opinions of authorities that appear to be opposed, so that the doctrine of the authorities cited in opposition should be understood to apply only to simply pious bequests. For although there are more authorities who teach that pious bequests fall under mixed jurisdiction, there are also others who hold the contrary view, as stated by Marti in *Tractatus de Jurisdictione*, part 4, chapter 1, section 89, number 13, where, after citing other interpretations, he wrote: "The determination of whether bequests are for pious causes pertains to the ecclesiastical court." And indeed, the bequests that the court called "religious" are intimately connected with matters of a spiritual nature, over which a lay judge has no jurisdiction, as stated in Chapter 2 concerning judgments. Reiffenst. *lib. 2 tit. 1 g. 3 n. 73. Moreover, such pious bequests often involve the determination of whether sufficient provision has been made for the obligations imposed; whether, for example, the Church can be burdened with further obligations of Masses to which it cannot adequately respond, either due to the existing number of Masses or due to a lack of priests, according to the decrees of Urban VIII and Innocent XII, dated December 23, 1697, in which it is stated: "Let the Bishops understand that if they are negligent or indifferent in matters of such importance, they will have to

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give an account of this neglected duty on the last day." But furthermore, in the present diocese, there was a custom, so that there was no record of such bequests having been judged in a secular court, as demonstrated by the attached document. And if (the court observed) the question were to be raised in practice, as to which of the two judges should hear the case, the ecclesiastical judge should be considered to have precedence, since the Bishop had granted the Society the power to accept such bequests after extended prayers.

WHAT WAS BEING DECIDED *EX OFFICIO*. After making the distinction between the execution of pious bequests and the settlement of debts arising from a bequest, it was observed that the execution of pious bequests pertains to the ecclesiastical judge, according to the cited chapter of the Council of Trent, which the Holy Congregation of Immunities faithfully followed, as in the case of S. Marci, in the year 1656, *Lib. Decret.* 5, fol. 9, where it is stated: "Concerning..."

[*Latin ed. p. 355*]

REGARDING JURISDICTIONAL MATTERS. In 355 cases concerning the fruits of tithes, legacies for pious works, and the fulfillment of the celebration of Masses and anniversaries, it was decided that these matters should be referred to the Bishop. Also, in the decree of Guastalla, dated September 27, 1696, in *Liber Decretorum*, volume 2, page 49, when a pious testator had instructed his trustee to expend the remaining funds after paying debts in so many Masses for the repose of the testator's soul, and a question arose regarding the competence of the court, the Holy Congregation responded: "Regarding the execution of the will of Bernard Soldini, who provided for pious causes, the case pertains to the ecclesiastical court. However, if the matter in question is to be considered as a coercive action to pay a civil debt, it would appear to be a matter of mixed jurisdiction, in which there is no place for prevention, as the Holy Congregation has often stated, and specifically in the case of Sorana, on February 18, 1631, in *Liber Decretorum*, volume 1, page 96, where it is written: 'Write to the Bishop, for in cases of mixed jurisdiction, there is a place for prevention.' Therefore, the ecclesiastical jurisdiction should be upheld, as far as it is lawful. However, in the present case, the custom favored the ecclesiastical judge, as such cases concerning pious legacies had always been judged by the episcopal court; and the Holy Congregation considered that such customs should be observed, as in the case of Spoletana, on September 15, 1637, in *Liber 3 Decretorum*, page 43, where it is stated: 'The Holy Congregation decided that the custom should be observed in favor of the Bishop regarding the examination of even purely secular cases.' Furthermore, it remained to be judged whether the case could be decided by either judge, or whether the Bishop had prevented the secular judge by a decree issued eight months prior, in which the Sodalitas was granted the power to

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accept the legacy. Therefore, the following questions were to be resolved: "I. Does the case in question pertain exclusively to the ecclesiastical court, or rather is it a matter of mixed jurisdiction? And, negatively, to the first part, and affirmatively, to the second. II. Who has jurisdiction in the case in question?" RESOLUTION.—After deliberations held on May 29, 1838, the Holy Congregation responded: #

[*Latin ed. p. 356*]

356. JURISDICTIONAL COMPETENCE. I. In the case under consideration, the cause should be referred to the ecclesiastical court. II. Provided for in the foregoing. From the above, we gather: I. Among ecclesiastical or spiritual causes, which exclusively belong to the ecclesiastical forum, and among purely temporal causes which belong to the civil forum, there exist certain cases that occupy an intermediate position, and are therefore called mixed forums. II. In cases of a mixed forum, the right to judge the cause belongs to the judge who first takes cognizance of it, that is, the one who first undertakes to hear the case. III. Among cases of a mixed forum, by the common opinion of the authorities, are included pious legacies, that is, those which are destined for divine worship or for works of mercy. IV. The execution of a pious legacy pertaining to divine worship belongs exclusively, or at least primarily, to the ecclesiastical judge (1). V. The cause for the settlement of a pious legacy also pertains exclusively to the ecclesiastical judge, if local custom so dictates (2). (1) See Appendix X. (2) In this matter of the competence of both powers, which in certain cases is very difficult, both theoretically and practically, it must be borne in mind what Benedict XIV teaches opportunely and wisely in his work *De Synodo, Dioeces*, Book 9, Chapter 9, throughout which chapter, in its conclusion, he gives the following warning: "We have presented these observations and collections to the eyes of the Bishops, so that, comparing past times with the present, they may see and lament the grievous wounds inflicted upon their ancient jurisdiction (and upon the rights of the Church, where more or less inherent according to the nature of the causes), if indeed secular powers, as William Durandus the Younger says, 'and whatever pertains to the ecclesiastical jurisdiction as far as temporal matters are concerned,' consider it their due. To this counsel of the secular judges, the Supreme Pontiffs and the most holy pastors of the churches have always opposed; but since they have been unable to dissuade them from their purpose, in order to avoid greater evils, they have, day by day, concealed and tolerated customs contrary to the ecclesiastical jurisdiction; and sometimes the Supreme Pontiffs have prudently guided matters, even granting privileges to the princes, which they had already usurped by their own authority. Indeed, it is to be hoped that secular power will remain within the limits established for it from ancient times; therefore, a Bishop would act imprudently if, in his Synod, he decreed anything by which he

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would attempt to regain jurisdiction that was formerly attributed to him by common right; for..."

[*Latin ed. p. 357*]

357 FROM S., CONGREGATIONE INDULGEMMO!!, CONCERNING THE SODALITIES OF THE DAUGHTERS OF MARY. OF THE CITY AND THE WORLD. August 30, 1866. DECREE. "It has been sufficiently demonstrated by experience and reason how important it is for the Christian people, both for families and for the common good, to establish institutions for the younger sex, and especially to provide for the support of our most holy Religion from a tender age, so that, devoted to works of piety, they may grow in virtue, and, having once embraced the right path, may not depart from it even in old age. Among other things which are recognized as serving this purpose, there are those pious sodalities which, especially those canonically instituted and established under the title of the Most Holy Virgin Mary, have been repeatedly commended not only by the Apostolic See, but also enriched with spiritual indulgences, and which are most commonly known as the Sodalities of the Daughters of Mary." Recently, a similar pious sodality was canonically established outside the city walls, in the Basilica of Saint Agnes, under the title and patronage of the Blessed Virgin Mary, of the Immaculate Conception, and of Saint Agnes, Virgin and Martyr, and was enriched with abundant indulgences by Apostolic Letters dated January 16, 1866, and by another Brief dated February 16. It is possible that someone might consider it, and without any benefit to the Church, gravely offend the Prince. Therefore, it is believed that he will sufficiently fulfill his duty if he diligently considers these three things. First, that the secular Prince never arrogate to himself the right to ecclesiastical matters; that is, that in no event should he intrude himself into matters of the first order, namely, purely spiritual and ecclesiastical matters. Secondly, that a lay judge should also invade that part of jurisdiction which has hitherto remained intact; for unless the Bishop immediately asserts his claim, he will likewise gradually lose it. Thirdly, where, either by privilege or by legitimate custom of the ecclesiastical forum, the limits of common law have been extended, which, as a matter of fact, we know to happen very rarely, the Bishop will see to it that, through his negligence or connivance, no abuses are contracted.

[*Latin ed. p. 358*]

358 CONCERNING THE CONFRATERNITIES OF THE DAUGHTERS OF MARY. In the year 1866, a primary or Archiconfraternity was established (1), so that it may have the right to incorporate other confraternities of the same name and institution, established or to be established everywhere, and to grant to them all and each of the Indulgences mentioned herein. We, PIUS IX, Pope, for the perpetual memory of this matter, grant

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the following: "Since, as We have learned, a pious and devout association of Christian women, called the Daughters of Mary, exists canonically erected under the title and patronage of the Blessed Virgin Mary Immaculate and Saint Agnes, Virgin and Martyr, in the Basilica of Saint Agnes outside the walls of this City, and whose members are accustomed to perform or intend to perform many works of piety and charity; We, confident in the mercy of Almighty God, and by the authority of the Apostles Peter and Paul, grant to all Christian women who shall join this pious association in the future, that if, on the first day of their entrance, they are truly contrite and have confessed, they shall receive a Plenary Indulgence; and to those members of the said association who, at the hour of their death, are also truly contrite and have confessed, and have received the Holy Eucharist, or, if they are unable to do so, at least have invoked the Name of Jesus with their mouth, or, if they are unable to do so, have devoutly invoked it with their heart, they shall also receive a Plenary Indulgence; and also to those members of the said association who are presently existing, who are truly contrite and have confessed, and have received the Holy Communion, and who devoutly visit the aforementioned Basilica on the feasts of the Nativity and Ascension of Our Lord Jesus Christ, and of the Conception, Nativity, Annunciation, Purification, and Assumption of the Blessed Virgin Mary, Immaculate, as well as on the feast of All Saints, on the feast of Saint Agnes, Virgin and Martyr, and on the first Sunday of October, from the first vespers until sunset, on these days each year, and there offer pious prayers to God for the concord of the Christian princes, for the eradication of heresies, and for the exaltation of the Holy Mother Church, We, in the Lord, mercifully grant the remission of all their sins, and a Plenary Indulgence. To those members, however, who, at least with a contrite heart, visit the aforementioned Basilica on the other feasts of the Blessed Virgin Mary, Immaculate, and there offer the prayers as mentioned above, We grant, for every such visit, forty days of remission from the penances enjoined upon them, or from any other debts of penance, in the manner customary in the Church. Furthermore, to those members who devoutly visit the aforementioned Basilica on each of the days of Lent and other days within the year designated for the Indulgences of Stations, as described in the Roman Missal, and who, on those days, offer pious prayers to God for the concord of the Christian princes, for the eradication of heresies, and for the exaltation of the Holy Mother Church, We grant that they may obtain all and each of the Indulgences, remissions of sins, and relaxations of penances, which they would obtain if they were to personally visit on those same days, and with the same devotion, any of the churches of Our City designated for those Stations, provided that they duly perform the

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works of piety prescribed for those indulgences. Moreover,..."

[*Latin ed. p. 359*]

OF THE CONGREGATIONS OF THE DAUGHTERS OF MARY. 359 Furthermore, to the Archconfraternity, or to be granted to it, observing the form of Pope Clement VIII's Constitution "Quaecumque" [Whatever]; now, however, Our Most Holy Lord Pope Pius IX, after considering the most humble petitions of the Moderator of that same Archconfraternity, and judging that it would greatly benefit the young women, allows even more such Congregations to be established and erected in the same place; in an audience held by the Most Eminent Cardinal Prefect on August 30th of the current year, 1866. To those sisters who, because of the distance of their places, cannot reach the Basilica of Saint Agnes to obtain Indulgences, We grant and decree that, whenever they visit any church or public oratory, they may freely and lawfully obtain all the Indulgences, both plenary and partial, mentioned above. Furthermore, since it has been reported to Us that the members of this pious Union often attend, or intend to attend, the sacred congregations where divine services and many works of Christian piety are held, or are accustomed to participate in spiritual exercises in the same Basilica on certain days each year, We, in order that these good and salutary works may be carried out with greater fruit, grant that all members of the Union, who are now and for the time being present at the aforementioned congregations, and who are truly penitent and have confessed, and who, on any day of the month chosen by the members themselves, receive Holy Communion and visit the aforementioned Basilica, and there pray as mentioned above, on the day that they perform these actions, shall receive a plenary Indulgence; likewise, We grant a plenary Indulgence to those members who have devoutly attended these spiritual exercises for at least more than half the time that they last, and who are also truly penitent and have confessed, and who have received Holy Communion, and who have visited the aforementioned Basilica, and there prayed as mentioned above. We also mercifully grant the remission of all their sins to the souls of the Christian faithful who, united with God in charity, have departed this life, through this means of suffrage. Moreover, We grant, by Our Apostolic authority, that Masses which any priest, secular or of any Order, Congregation, or regular Institute, celebrates at the altar of this pious Union, located in the Basilica of Saint Agnes, for the soul or souls of any of the members who, united with God in charity, have departed this life, shall equally serve as a suffrage, as if they had been celebrated at a privileged altar. Finally, We desire to show special favor to Our beloved son Albert Passeri, Canon Regular of the Lateran Palace, of the Order of Saint Augustine, Visitor and Parish Priest of the aforementioned Basilica, and also to the current Moderator of this pious Union, and, wishing to grant his earnest requests, so that he, and the

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aforementioned Moderator for the time being, may enjoy the Indulgences and other spiritual graces, provided that the prescribed works of piety are duly performed; and also that the Moderator in the same Union, now and for the time being, may, with the application of the plenary Indulgence for obtaining it at the hour of death, in the form of...

[*Latin ed. p. 360*]

360 CONCERNING THE ASSOCIATIONS OF THE DAUGHTERS OF MARY. Furthermore, We have decreed that, with regard to the aforementioned associations, no distinction be made; but that it may be permitted to the Bishops, as they shall judge it opportune, to establish and erect in their respective cities or dioceses, several such associations; which, once established and erected, may be aggregated to the aforementioned Arch-Association and may participate in the granting of indulgences, so that in the very churches where the respective associations have been established, in addition to the customary functions according to the laws of the Church, the same may, by Our Apostolic authority, be blessed and may be held valid. This is without prejudice to Our regulations and those of the Apostolic Chancery concerning the granting of indulgences, and to all other Apostolic Constitutions, ordinances, and any other contrary provisions whatsoever. These present regulations shall be valid perpetually, from now on. Moreover, We desire that any other perpetual indulgence, or one that is to endure for a time not yet elapsed, which has been granted to the aforementioned pious association, be hereby revoked, as We revoke it by these presents, and be declared null and void, both now and in the future. Given at Rome, at St. Peter's, under the Fisherman's ring, on the sixteenth day of January, in the year 1866, in the fifth year of Our pontificate.

L.-f S. N. Card. PABACCIANI CXARELLI.

PIUS PP. IX.

For the perpetual memory of the matter.

"We bestow upon the association of the faithful, established for the exercise of works of Christian piety and charity, particular honors and privileges, according to the custom of Our predecessors, the Roman Pontiffs."

Therefore, since the esteemed son, Albertus Passeri, Canon Regular of the Most Holy Savior at the Lateran, and Parish Priest of St. Agnes, Virgin and Martyr, outside the walls of the city, has taken care to canonically establish a certain pious association, under the title of the Daughters of Mary, and under the patronage of the Virgin Mary, ever Virgin, and of St. Agnes, Virgin and Martyr, in the aforementioned parish, and has offered supplications, so that We might, out of kindness, grant it the honors and privileges of a Primary Association, We, mindful of the grave danger from which We were delivered by the most present help of the Holy Mother of

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God and the Divine Agnes, and moved by the prayers intended to promote and foster their cult, have wished, as far as it is pleasing to the Lord, to grant their request.

Therefore, We hereby absolve all and each of those to whom these Letters are favorable, from any and all excommunications, interdicts, and other ecclesiastical censures, sentences, and penalties of any kind or for any reason, if they have incurred them, solely for this reason; and We declare them absolved. We hereby canonically erect the aforementioned association, in the parochial church of St. Agnes outside the walls, under the title of the Daughters of the B. Virgin Mary, Immaculate, and under the patronage of the same Divine Mother and of St. Agnes, Virgin and Martyr, as a Primary Association, with all the honors, privileges, rights, and preeminences customarily associated with it, by the authority of these Our Apostolic Letters.

And We hereby authorize the Parish Priest of the same church, for the time being, who is the Moderator of the association, to aggregate to this Primary Association any other associations, wherever they may be canonically established, of the same name and institution, provided that the Constitution of Clement VIII, Our predecessor of blessed memory, mentioned above, is observed.

[*Latin ed. p. 361*]

OF THE CONFRATERNITIES OF THE DAUGHTERS OF MARY. 361 Visits to the church, even those made for the purpose of acquiring Indulgences, may be performed as often as prescribed; observing, in all other respects, the Constitution of Clement VIII, and other laws to be observed. This present decree is valid forever, without any further Brief being required. Notwithstanding anything to the contrary, "Given in Rome from the Secretariat of the Holy Congregation for Indulgences on the 30th of August, 1866." (1) Father Anthony M., Cardinal Panebianco, Prefect. Sign. A. Colombo, Secretary. And We, by Our Apostolic Authority, grant, bestow, and concede to all and each of the Indulgences, privileges, and other spiritual benefits, even concerning the privileged altar, with which the aforementioned Primary Confraternity has been enriched by this Holy See, and other benefits that can be shared, perpetually. We decree that these Our Letters are firm, valid, and efficacious, and shall have their full and complete effect, and that We shall fully support the aforementioned confraternity in the future, so that in all matters concerning this, judgment and definition must be rendered by any ordinary or delegated judges, including Auditors of the Apostolic Palace, and that anything to the contrary shall be null and void if, by anyone, it should knowingly or unknowingly be attempted. Notwithstanding any Apostolic Constitutions and Ordinances, nor the statutes and customs of the same Confraternity, confirmed by Apostolic Oath, or any other contrary provisions whatsoever. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 16th of February, 1866,

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in the fifth year of Our Pontificate. L. f S. N. Cardinal Paracciani Clarelli. (1) Confraternities canonically erected or to be erected, which wish to be affiliated with this Archconfraternity, shall send their letters, together with testimonial letters from their own Ordinary, according to the form of the Constitution of Clement VIII, to Rome, and shall register them with the Parish Priest of St. Agnes outside the walls, Rector of the Archconfraternity of the Daughters of Mary.

[*Latin ed. p. 362*]

362 DECLARATION CONCERNING THE DECREE OF JANUARY 8, 1861, REGARDING CONFRATERNITIES. October 19, 1866. DECREE. "By the Decree of this Holy Congregation of Indulgences, issued on January 8, 1861 (1), and in accordance with the Constitution of Clement VIII, beginning with the words 'Quaecumque data sub die,' concerning institutions or aggregations of confraternities, it was stipulated that in the formulas of aggregation, which should agree at least in substance with those prescribed by Clement VIII, at least the principal sections of this same Constitution should be included, along with variations approved by His Holiness. Now, Our Most Holy Lord, Pope Pius IX, at the earnest request of certain Superiors of Religious Orders, and Rectors of Archconfraternities, after having heard them, and in an audience held by the Most Eminent Cardinal Prefect on October 19, 1866, has graciously granted that the aforementioned exposition of sections may, in the future, also be provided separately from the letters of aggregation, provided, however, that it is entirely communicated along with the aforementioned letters, and expressed in the same formula. All other things, both those prescribed in the aforementioned praised Constitution of Clement VIII, as well as in the aforementioned Decree, remain in force and are to be observed. Contrary provisions notwithstanding." Given at Rome, from the Secretariat of the Holy Congregation of Indulgences, on October 19, 1866. Ant. M. Card. PANEBIANCO, Prefect. Phil. Can. Cossa, Substitute. (i) This Decree is found on page 57 of this volume.

[*Latin ed. p. 363*]

363 FROM THE HOLY CONGREGATION FOR THE CAUSES OF SAINTS, CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, REVEREND BENEDICT OF URBINO, PRIEST, OF THE ORDER OF MINOR FRIARS OF THE HOLY FRANCIS OF ASSISI, CAPUCHINS, REGARDING WHETHER IT IS POSSIBLE TO PROCEED WITH THE APPROVAL OF VIRTUES AND MIRACLES TO HIS BEATIFICATION. DECREE. "Since the Venerable Benedict of Urbino diligently labored for many years in cultivating the fields of the heavenly Father's family, he merited, in the final hour of his life, to hear the voice of the Lord inviting him: 'Well done, good and faithful servant. Enter into the joy of thy lord.' And thus, laden with the abundant

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harvest of his works, he entered into the joy of his Lord. Therefore, received into the dwelling of divine charity, Almighty God made him wondrous to the world through signs and miracles, so that those who saw the good works that he had done might glorify the heavenly Father; and admiring the glory that he had attained, they might implore the help of this faithful servant in times of trouble. After the Sacred Congregation, in three assemblies, had carefully examined these portents, the Most Holy Pope Pius IX, on the fourth day before the Kalends of October of the current year, decreed: 'That three miracles, brought about by the intervention of the Venerable Benedict of Urbino, have occurred through God;' and therefore, it is possible to proceed to further steps, without it being necessary to discuss another miracle. Therefore, given the series of events that have followed, in accordance with the sanctions of the Supreme Pontiffs up to this point, nothing remained of this most important undertaking, except that the Sacred Congregation should again..."

[*Latin ed. p. 364*]

364. FOROSEMPRONIEN. The General Congregation of the Sacred Congregation, before the Most Holy Lord, in which a question was proposed: "With the virtues and miracles already approved, can the solemn beatification of the Venerable Benedict of Urbino proceed?" This indeed took place on the fifth day before the Kalends of December of that same year, in the Pontifical halls of the Vatican, by the Most Reverend Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Sacred Congregation and Relator of the Cause, and all the Consultors and Cardinals, one after another, gave an affirmative response. However, the Most Blessed Father, considering the great burden of imposing an end to the cause with his supreme judgment before first seeking counsel from the Most High, encouraged all those present with most loving words to seek this. "Finally, on the second day after Sunday, the third of Advent, the Most Holy Lord, in His private sanctuary in the Vatican, fortified by heavenly power, prayed to the Church dedicated to the Immaculate Conception of the Virgin Mary, and entering the hall where the sacred psalms are sung, He received the Most Reverend Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, and the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned secretary, and, with them present, He decreed: 'It is safe to proceed to the solemn beatification of the Venerable Servant of God, Benedict of Urbino.'" This decree was to be made public, recorded in the acts of the Sacred Congregation, and letters apostolic, in the form of a Brief, were to be issued regarding the solemnities of the beatification to be celebrated whenever in the Patriarchal Basilica of the Vatican, on the sixteenth day before the Kalends of January of the year 1836.

*Loco Signi C. Episc. Portuen. et S. Rufinae Card. PATRIZI S. R. C. Praef.

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D. BARTOLINI S. R. C. Secretarias.*

[*Latin ed. p. 365*]

365 FROM THE SECRETARY, IN BRIEF! APOSTOLIC LETTERS. On April 13, 1866. PIUS IX, POPE. FOR PERPETUAL REMEMBRANCE. — "In order to increase the faith of the faithful and the salvation of souls, moved by pious charity towards the heavenly treasures of the Church, We grant, with all Our authority, to all and to each Christian of both sexes who are truly penitent, and who have confessed their sins and received Holy Communion, and who, on the day that the feast of the Blessed Virgin Mary, under the aforementioned title, is celebrated, having visited with devotion from the first vespers until sunset, the Church under the title of Saint Alphonsus Mary of Liguori, of the Congregation of the Most Holy Redeemer of the City, and the Image of the Blessed Virgin Mary commonly called "Our Lady, Help of Christians" located therein, and who, there, have offered devout prayers to God for the concord of Christian princes, the extirpation of heresies, and the exaltation of Holy Mother Church, a Plenary Indulgence and remission of all their sins, mercifully in the Lord. To those Christian faithful who, with at least a contrite heart, have visited and prayed in the aforementioned Church and before the Image on any day of the year as mentioned above, We grant the remission of three hundred days of the penances prescribed to them, or in any other manner as is customary in the Church. We also grant that all these Indulgences, remissions of sins, and relaxations of penances may also be applied to the souls of Christian faithful who, united with God in charity, have departed this life, as a form of suffrage. Let this be observed, notwithstanding any impediment. These present decrees are valid for all times, present, future, and perpetual." Given in Rome, at Saint Peter's, under the Fisherman's Ring, on the 13th day of April, in the year 1866, in the fifth year of Our Pontificate. Place: [illegible] Sign: Cardinal PARACCIANI CLARELLI.

[*Latin ed. p. 366*]

866. A BRIEF HISTORY. I. This ancient image of the Blessed Virgin Mary, commonly known as the Mother of Perpetual Help, is a Byzantine work, perhaps from the 13th century, as experts in art believe. It was first brought from the island of Crete to Rome by a pious merchant in the late 15th century. It was placed in the church of St. Matthew on the Merulana, and, as tradition holds, the Virgin Mary herself revealed this place. There, for three hundred years and more, until the year when that church was demolished (which occurred at the beginning of the 19th century), it was renowned for miracles, as ancient monuments attest, and was venerated with great piety by the Roman people and visitors. Then, by the Irish Augustinians who were near the church, it was transported to the church of St. Mary in Posterula, and, by order of Pope Pius IX, it was restored to

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the Esquiline Hill and, in the church of St. Alphonsus Mary of Liguori in scopi, by his students, that is, the Fathers of the Congregation of the Most Holy Redeemer, with great solemnity, on January 19th of this year, 1866, it was publicly dedicated to worship, with a large gathering of the Roman people, and was placed there on the main altar: so that, in these times, in which, by the special providence of God, it seems to have emerged from obscurity after having been hidden for a long time, it may help the Roman Pontiff and the entire Church with its name, benignly, powerfully, and quickly. The Most Holy Father, graciously accepting the supplications and vows of the Reverend Father Nicholas Mauron, Superior General of the aforementioned Congregation, granted indulgences to the following prayers (which we have translated into Latin from an Italian text), as will be evident from the Rescript which we add below, after the following prayers. PRAYERS IN HONOR OF THE BLESSED VIRGIN MARY, MOTHER OF PERPETUAL HELP, WHO IS VENERATED IN ST. ALPHONSUS ON THE ESQUILINE HILL. I. O Mother, whose name is Mother of Perpetual Help, a miserable sinner, fleeing to You, and trusting in You, stands before You, humbled in spirit. O Mother of Mercy, may You have mercy on me: You are called the hope and refuge of sinners; therefore, be You my refuge and my hope. Praying for help through Jesus Christ, may You grant it, to Him who, with a merciful heart, extends His right hand to you, who is your protection, and who dedicates Himself to you as a perpetual servant. I give thanks to Him, and I praise Him, because...

[*Latin ed. p. 367*]

PRAYERS. May the gift of confidence in You, granted to me through Your goodness, be to me as the pledge of my eternal salvation. Alas, wretched me, for I have failed to take refuge in You, I have fallen; I firmly trust that, fortified by Your protection henceforth, I shall live. And I do not doubt that, if I call upon You, You will help me. But I fear that, given the opportunity to sin, I may neglect this, and thus, alas, I shall perish. Therefore, I earnestly desire this from You, and I implore You, according to my ability, to grant me this: that in every temptation and in every struggle against the wicked enemy, I may immediately turn to You, and never cease to cry out: "Mary, help me!" O Mother of Perpetual Help, do not permit me to abandon my God. Five times, "Ave Maria." *V.* Pray for us, O Holy Mother of God. *T.* That we may be made worthy of the promises of Christ. LET US PRAY. Almighty and merciful God, who willed that the Blessed Virgin Mary, Mother of Your only Son, should be for the aid of the human race; grant us, we beseech You, that, through her intercession, we may avoid the contagion of the devil and serve You with a sincere heart. Through the same Christ, etc.

II. O Mother of Perpetual Help, I beseech You, grant me that I may constantly invoke Your most powerful name, which is both the protection of

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the living and the salvation of the dying. O Mary, most pure and sweetest, make Your name the breath of my life. Do not delay, O Lady, whenever I call upon You, to help me: for in all the temptations and necessities with which I am afflicted, I shall never be without You if I invoke You, repeating often: "Mary, Mary." What comfort, what sweetness, what confidence, what tender feeling my soul experiences when it merely mentions or thinks of You! I give thanks to God that He has given You such a sweet, such a powerful, and such a beloved name. But I am not content with merely invoking Your name; I wish to invoke You with love, and I hope that Your love will incite me to constantly turn to You, O Mother of Perpetual Help. Five times, "Ave Maria," etc., as after the first prayer.

III. O Mother of Perpetual Help, You are the dispenser of those gifts which God bestows upon us poor ones, and therefore You are so powerful, so rich, and so benevolent, that You come to our aid in our miseries. You are the advocate of the guilty, those who are most miserable and most abandoned, and who turn to You: therefore, help me also, who turn to You. I place my salvation and my eternal life in Your hands; I commend my soul to You. Receive me, Your most familiar servants, and take care of me; and this is enough for me. For if You will help me, I shall have nothing to fear: not from my sins, because You will obtain forgiveness for them for me; not from the devil, because You are more powerful than the entire host of hell; and finally, not even from my Judge, Christ Jesus, because He is appeased even by a single request made to You. I fear only one thing, that through extreme laziness I may neglect to invoke You, and thus, alas, I may perish. Therefore, O my Lady, obtain forgiveness for my sins, and grant me perseverance to the end, and finally, the inestimable gift of loving Jesus Christ, and of constantly turning to You, Mother of Perpetual Help. Five times, "Ave Maria," etc., as above after the first prayer.

RESCIPT. "The Most Holy Pope Pius IX, with paternal kindness, has heard the supplications and votive offerings of the Most Reverend Father Nicholas Mauron, Superior General of the Congregation of the Most Holy Redeemer."

[*Latin ed. p. 368*]

BY ORDER. Having received information from the Secretary of the Congregation of Sacred Rites, concerning the aforementioned prayers in honor of the Blessed Virgin Mary, known as "of perpetual help," the Holy See, by its paternal authority, has benignly approved them and grants to the faithful of both sexes, who recite them with a contrite heart, a partial indulgence of one hundred days, once a day. Furthermore, it is granted that these indulgences may be applied for the relief of the souls of the faithful suffering in the fire of Purgatory. To those who dispose of things otherwise, no obstacle whatsoever. May 11, 1866. C. F.** Port. and S. Ruf. Card. PATRIZI, Prefect of the Sacred Roman College. L. t S. D. Bartolini, Secretary of the Sacred

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Roman College. The present decree of the Sacred Roman College, dated May 11, 1866, by which indulgences are granted for reciting the aforementioned prayers in honor of the B. V. M., was presented in the Secretariat of the Sacred Congregation of Indulgences, and a copy of the decree of the same Sacred Congregation, dated April 14, 1856, was submitted. The aforementioned prayers may be recited in any language, provided that the fidelity of the translation is confirmed by a declaration of the Most Holy Pope Pius IX, dated December 29, 1864. In witness whereof, etc. Given in Rome, from the Secretariat of the Congregation of Indulgences, on July 4, 1866. L.fS. Filii. Can. Cossa, Substitute.

[*Latin ed. p. 369*]

369 APPENDIX X. CONCERNING THE OFFICE OF AN ECCLESIASTICAL JUDGE IN THE EXECUTION OF PIOUS WISHES OR PIOUS DISPOSITIONS. Having considered the nature of pious legates and the wishes of the deceased, both powers are entrusted with the execution. To the civil power, as well as to the ecclesiastical power, each properly pertains the right to decree the implementation of pious wishes, for their own reasons, in order to compel the heirs to observe them, as is also the common practice. The judgment is of importance, for all that pertains to piety, the ethnic Romans, most learned in law, have testified. For Ulpian, in his *Sententiae*, speaking in defense of piety, declared that the Bishop ought to be the protector. Book 4. Furthermore, having considered those things which are commonly associated with pious bequests in good faith, the ecclesiastical judge must be very careful concerning the possessor of the inheritance, who has erected a monument for the deceased. For no person is present who, as is fitting, can represent the legate, or insist on the fulfillment of the condition; often it happens that, rendering this general account to the heirs concerning the affairs, they are not bound by any principal action, or by a pontifical office, but the will of the deceased in the pious cause is neglected. Indeed, very often testaments concerning pious causes are presented, and the heirs are compelled by authority to observe the wishes of the testator. I. Concerning the implementation of the inheritance; 50 ff. Persons petitioning. The law can decree this, at least in part, by the civil authority, because the civil power pertains to those heirs who are exempt from secular jurisdiction (1), or because the testament pertains generally to testaments (2). (1) No one should presume to bring a case concerning Clericum before a secular judge. From canon law, Clericum causes, q. i. (2) In testaments concerning pious causes, only natural and divine law are considered, but legal formalities are not considered, as the authors teach, and the Holy Rota recently declared, paragraph 8, decree 166, number acta,

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volume II, page XVIII, and part I, volume I, decree 321, number 2, where...

[*Latin ed. p. 370*]

370 APPENDIX X. Concerning a particular third (1). Regarding this, both canonical and civil laws were established to execute the pious intentions, or to provide for the poor, and to sustain those in need, according to their office; the Bishops, or, if necessary, even by custom, privilege, or statute, were appointed to carry out this execution. And since the Holy Council of Trent declares that in cases prescribed by law, the first thing to be observed is the will of the testator, and that the statutes of the canons should be observed, it is commanded that the Ordinaries of the places should know and execute the statutes of the canons. And since it is not enough to merely mention the aforementioned statutes, it is fitting to propose the following legal sanctions: Pope Clement V, in the Council of Vienne, among the living, decreed that executors should be appointed for all pious foundations; and he also granted the right of visitation to hospitals, schools, and confraternities, whether they are called Viennese, or by any other name, as it is read in Clemens, cap. 2, that the goods, possessions, and rights of these institutions, under the immediate protection of the King, are held by those who occupy them, those who usurp them without their permission, and that alms, acts of piety, and charitable works are collected and distributed, and that all houses, whatever they may be called, even if they are endowed with a privilege of exemption, and all that pertains to them, are subject to the jurisdiction of the Ordinaries.

"Because it sometimes happens that, under another name, pious foundations are ruined by neglect: sometimes the faithful neglect the places that have been founded for the sake of God, sometimes they allow the poor and the leprous to be received there, and sometimes they allow the property to be squandered, which the secular Emperors could not have prevented, nor, if they could have, would they have wanted to include such pious causes under a general disposition of testaments; and there is a weighty reason for this, namely, because the motive of a pious bequest, or disposition for pious purposes, is the love of God, or the desire of the testator to obtain prayers for the forgiveness of his sins, and for these highest ends of piety, the laws of God do not require any legal solemnity. It is sufficient that the natural will of these dispositions be proven. For it is not right that such just intentions should be frustrated by reason of the lack of some legal formality, especially since the danger of fraud is far removed from pious testaments. (1) For example, if a question arises as to whether a bequest should be considered a pious bequest, or not. If, for example, a chapel is to be considered a pious bequest or an ecclesiastical endowment. If the laws and conditions attached to a pious bequest are reasonable, so that they can

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and should be accepted by the Church. And many other similar cases.

[*Latin ed. p. 371*]

37 f. Furthermore, these [institutions] ought to be sustained by the contributions of the faithful, and it is inhuman to allow them to languish. This Constitution of the Council of Vienna, specifically, has been renewed, condemning those who, by converting them to their own uses, deprive them of their intended purpose. In the Council of Trent, Session 15, Chapter 7, it is stated: "Let the Ordinaries take care that whatever is legitimately or by statute assigned to them, or which pertains to them by right, or by privilege, is faithfully administered to the faithful, and that those who, under any pretext, neglect or abuse these things, incur the detestation of all good men." Furthermore, it is stated: "Administrators, who, despising the care of the faithful, and under any pretext, neglect or abuse whatever is entrusted to them, whether it be of any name, shall be subject to the authority of the Council of Vienna, which begins: 'Because it sometimes happens that those to whom, by law or by statute, or legitimately, or by ancient custom, or by privilege, certain things belong, neglect or abuse them...' And in the Decretals of Gregory I, and others, we find the following canonical sanctions. The aforementioned Rectors shall not omit to provide for the needs of these [institutions], but shall diligently administer them, and shall see to it that they are maintained, governed, and administered in all things, as befits a place approved by the Council. We also have, above all others, these things which are set forth in the Constitution of the Council of Vienna, which states: "We command that Xenodochia, in which religious persons are employed for the purpose of receiving guests, and which are maintained by the contributions of the faithful, shall be compelled to provide proper reception, and to make necessary improvements, and to diligently govern and administer these places, so that they may not be neglected, abandoned, or lost." The Synod also renews the Constitution concerning the administration of ecclesiastical goods. It is read: "In Chapter 3, concerning Testaments, it is stated: 'It has come to our attention that a certain monastery has been founded by the will of a pious man, and that the desire of the testator is that his heir should continue to provide for the needs of the monastery. We, therefore, exhort you to take care that the heir, with all due diligence, fulfills the will of the deceased, and that he provides for the monastery, and for those who are exempt from all obligations, and that he does not alienate the property which has been bequeathed to the monastery.'" Furthermore, it is stated: "Let the monastery which has been founded be ordered according to what has been commanded, and let all things be built and administered according to the will of the deceased, without any alienation." And if, within the prescribed time, or in the place where it was established, he has not fulfilled what was commanded, or if he has neglected to do so, then let him be compelled to do so by the

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ecclesiastical court and by other means of justice. However, let no prejudice be caused to him by these exemptions or privileges with regard to other matters.

[*Latin ed. p. 372*]

372 APPENDIX X. they shall be assigned without diminution whatsoever. For, according to the most pious Laws, it is fitting that, with due diligence, the testamentary wishes of the deceased be fulfilled according to the mandate received through the last will and testament." Diocesan officials are obligated to ensure that the testator's wishes are fulfilled. And according to ancient canons, those who do not pay the pious legacies for the deceased, or who delay in doing so, should, as were the faithful, be rejected from the Church. Furthermore, in chapter 6 concerning Testaments, reference is made to the canonical sanction of the Council of Moguntine, which states: "If the heirs do not fulfill the commands of the testator, the local Bishop has the right to demand from them, with all legal rights and other things as the deceased wished, all that which the Council of Vasens, 2nd canon, 4th chapter, decreed. Those who were excommunicated were considered as murderers of the poor until they made amends." (Causes, 23rd question, 1st canon, Clerics, or seculars. Also, see canon 3, chapter 17 of the same title, concerning Testaments.) In the celebrated chapter of the Council of Trent, which is widely cited, Gregory I wrote to Bishop JXemon, stating that Religious, as well as Clerics and Laity, who bequeath money and other things through their wills, which are rightfully due to the Church, should refer to our part in these matters. Therefore, since the Emperors and Christian laws, which imitate the ancient canons of the Church, are most salutary, and since Emperor Justinian in this Novella, commanding that the pious legacies be observed according to the laws of the Empire, states among other things: "In all cases, let the testamentary wishes of the most holy deceased be carried out, even if it should happen to the testators themselves; we command the Bishops of those places to see to it that, according to the wishes of the deceased, all things proceed according to their will; and we command those who are ordered to do these things, to provide for them according to the aforementioned chapter 9 of the same." Furthermore, it is stated: "John, a cleric, and P. laiexsecutores ultimae vel donatori-persoimplere lucrum iussit iis."

[*Latin ed. p. 373*]

APPENDIX X. Concerning Endowments: Most holy Bishops, for pious causes, have received endowments, the fruits of which, as stated above, by law belong to the places concerning which we have spoken, as is clear from chapter 3 of the book "De Xenodochiis" concerning religious houses, which was endowed with fruits and accessories for the benefit of the said places; the most Reverend testator also disposed of these endowments, and this

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disposition was further amplified in the Council of Vienne, according to Clement, where it was decreed that if those who are negligent in fulfilling these matters, they shall render an account to the most holy Bishop of the place. If, however, the most holy Bishop of the religious houses, chapter 2, should not have entrusted the administration of these endowments to the officials of the place, even though the things mentioned above pertain to them, it is permitted to the Metropolitan to demand and enforce the fulfillment of these matters. Furthermore, it is permitted to others, by Apostolic authority, to urge the fulfillment of these pious dispositions, and to provide assistance in such a manner that all pious works may be accomplished." The Council of Trent further declared these rights more explicitly. Therefore, Fagnanus, in the aforementioned work, chapter 3, number 7, wrote: "Therefore, all these things are under the authority of the Bishop, and it pertains to his disposition: not that the Bishop should have dominion over these hospitals, colleges, and confraternities of laymen, or over schools or any other works of piety, charity, and generally all pious institutions which are under his care; but that those to whom they are entrusted should be subject to him." Although Fagnanus distinguishes between places that are within the diocese and those that are not, except for religious houses that are under immediate protection, the right of the Bishop to visit pious places, which was established by Trent, pertains to the ecclesiastical places, namely those that are founded by the authority of the Bishop, according to chapter 4 of the book "De Religiosis Domibus" (1).

(1) These are called by various names in law, places destined for divine worship, and according to their nature, they are subject to different laws, or enjoy privileges. Sacred places are those that are dedicated to perpetual public worship by a special rite and blessing, or are consecrated for the burial of the faithful. Other places, which are called pious but not sacred, are either religious or ecclesiastical, and are those that are established by the authority of the Church, such as xenodochia, hospitals, seminaries, monasteries, and sodalities; similar places that are founded by laymen without the authority of the Church are called simply pious places, or pious lay institutions, or even private institutions. Such pious lay institutions do not enjoy ecclesiastical immunity, nor do their goods.

[*Latin ed. p. 374*]

It is sometimes said that, for the purpose of determining whether an ecclesiastical authority intervened in the founding of a hospital, the question arises whether the founders intended to invoke such authority, or whether the intervention of the episcopal authority occurred independently, and whether, even if it is certain that such authority did not intervene, the hospital, since it is a place where poor and unfortunate people are found, is considered to be under the protection of the Church, as stated in chapter 1 concerning ecclesiastical buildings, and there, in the Glossary, and in

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Innocent [III], who says: "Dispositiones, ea domibus religiosis." Therefore, in chapter 4 of Religious Matters, and following, the same author wrote: "It is now fallacious to claim that a leprosarium belongs to the solicitude of the Bishop, to see, to inquire, to visit, lest the goods destined for the use of the poor be consumed; especially when they are provided by alms and charities." Frederick [III] says: "This has been followed by the Sacred Congregation of the Council, and therefore pertains to the solicitude of the Bishop, so that the pious intention of the founders may be carried out." A certain testator of Tervillia stipulated in his will that a hospital should be established from his goods... It is fallacious in a second way if the Bishop intends to visit the hospital in order to see whether the intention of the testator, concerning the administration to be assigned to it, is being fulfilled, as stated in chapter 4 of Testaments, canon 11. Frederick, number 3 of the Senatus, says: "If a university of Tervillia is established without any intervention of the Bishop, it is generally considered; therefore, it is not subject to the strictness of the law." Extravagant, Paul II, year 1468, as the common opinion of the authors states; S. Rota, in recent proceedings, page 2, decision 248, number 18 and following, and decision Sii, part 10, § 9. De Luca, in Alien, discourse, number 10, says: "It is one thing for a place to be pious (simply), and another thing for it to be ecclesiastical; therefore, it is well that a place be pious, and that pious works be carried out, and also that it be subject to visitation, correction, and the jurisdiction of the Ordinary or another ecclesiastical superior in some respects; and yet it is not an ecclesiastical place for this particular purpose, so that its goods do not fall under this prohibition." In Bologna, on March 2, 183U, the administrators of the pious place had fully the power to dispose of the goods of the testator who had endowed the same pious place with a generous inheritance; then the doubt arose: "Whether these administrators can alienate the goods of that inheritance without the Apostolic approval in this case." The Sacred Congregation C. responded: affirmatively, given the will.

[*Latin ed. p. 375*]

"The administrators, numbered 375, are elected annually by the University, and the distinction made between them and those brought in from Fagnano is not clear. They are assigned to pious ecclesiastical and lay institutions. Indeed, there are often lay pious foundations in which goods are held according to the wishes of the founders; nevertheless, whether the hospital itself has been visited or not, Cardinal Borromeo, pretending to visit it, sent a letter to the designated administrators, and excommunicated those who refused and appealed, and seized the hospital's assets. In response to these matters, the Sacred Congregation, having considered Chapter 8, session 22, and the interpretation of the Sacred Council, in *Luca, I. 3 de Iurisd. et Foro*, section 40, number 14, stated: 'This hospital is private; nevertheless,

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it can still be corrected by the Council, session 22, and according to the aforementioned decree, it is competent for the Ordinary to visit and reform it only in those matters which pertain to the observance of the founder's will.' This is consistent with other resolutions, including that of Pignatelli, volume 7, consultation 15, and the mandate sent by Sixtus V in 1588 to the Nuncio in Naples, in which the Sacred Congregation judged: 'The Bishop can visit all pious institutions, whatever they may be called, and can reform and correct them in cases of negligence, or dilapidation of assets, or in order to fulfill the will of the testator, even if they are lay institutions, or if they are private, as long as the effect of the common law or the intention of the law is not violated.' Furthermore, in section 45 of the same work, it is stated: 'No other title to visit pious places is opposed to this, except for the exception indicated by Fagnano, namely, that the Ordinary cannot visit lay pious institutions while the founder is alive. In this case, although the Ordinary cannot visit the same pious institutions as an executor of the founder's pious dispositions, while the founder himself is alive, he can visit those who expend their goods on pious works; nevertheless, he can visit and reform the same pious places in order to prevent assemblies, and other evils from occurring, as the founder himself..."

[*Latin ed. p. 376*]

376 Regarding APPENDIX X. Lucca observes, cited in *Disputationes de Jurisdictione*, loc. 40, n. 1, 4. It is observed that certain lay institutions, explicitly founded, can be exempted from the law by their founders. However, the question arises: what is the legal basis if these same places and institutions were not initially subject to the jurisdiction of the Bishop? Can pious institutions established by religious orders be subject to the jurisdiction of the Ordinary? To clarify this matter, two distinctions must be made regarding the exemption of pious institutions: one is granted by privilege from the Holy See to the founders; the other is based on the will of the founders. It is doubtful whether the will of the founders, established from the very beginning, can be enforced. The first is nothing other than a privilege; the second is a law that determines what is requested. According to the decree of the Council of Trent, session 22, chapter 8, if the Bishop is constituted as the executor of all pious works, he has the power, even against custom, to enforce the dispositions. If the exemption is granted solely by custom, or by a privilege mentioned in statutes, it is clear that the Bishop has the power to visit these places, as the canons grant. Furthermore, pious founders have the power to establish laws and statutes regarding these institutions, and to order the enforcement of these dispositions. However, if the Bishop visits these places, or, from the very beginning of the foundations, which are subject to his jurisdiction, he can also enact laws that are contrary to the privileges granted: a legate (1).

(1) After the Council of Trent, among the controversies that immedi-

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ately arose regarding the visitation of pious places exempt from episcopal jurisdiction, a certain case involving the Papian Nicholas V in the year 1449 is noteworthy. A large hospital, erected by some citizens of Pavia, was endowed with significant privileges and had received protection from the Apostolic See. After the Council of Trent, due to the aforementioned decree, the Bishop claimed the right to visit it as a delegate of the Holy See; the matter was referred to the Holy Congregation, and, with the favor of the Bishop, a resolution was reached in 1575, as reported by Fagnanus in chapter 5 of *De Xenodochiis et Religiosis Domibus*. However, a controversy arose again in 1651, and the truth of this resolution was questioned, as recounted by Cardinal De Lucca in *De Jurisdictione et Facultatibus*, loc. 41, n. 1. The Holy Congregation, on April 26, 1653, ordered that the matter be fully reconsidered, and on May 16, 1654, a resolution was issued in favor of the Bishop. However, the question did not cease; but rather, it flared up more intensely, and the case was repeatedly presented until, in July 1666, it was ordered that it be strictly enforced, as stated by Cardinal De Lucca in the aforementioned passage, regarding the foundation and endowment. Although we are unaware of the outcome of this controversy, Cardinal De Lucca, defending the position of the Bishop, reduced the question to these terms: whether the exemption granted was based on a convention and contract established by law in the foundation, or whether it was a simple privilege. It appears that the Holy Congregation also considered the question in these terms, as it requested information regarding the foundation and endowment.

[*Latin ed. p. 377*]

377 IX x. It may be urged, that this exemption, being like a law established in the foundation, is not easily set aside (for it would not be permitted that what the Holy See has decreed should be annulled); but perhaps you will say: how can this prejudice be reconciled with what you asserted concerning Fagnano, that all pious works in some way benefit the Church? Nor is it the case that these places are under the hand of the Bishop in that which pertains to the execution of the will of the Founders; it is clear from chapter 9 of the same decree that the Ordinary cannot visit these pious places which have been granted this other exemption. It often happens that pious Founders, in their pious institutions, provide for this very thing, and the Ordinaries, indeed, sometimes withdraw from the jurisdiction of the Bishop, as is clear from several resolutions which Pignatelli, volume 7, consultation 15, cites, which are of this tenor: "In Licien, on March 11, 1604, the Sacred Congregation, having heard the parties, decreed that this hospital is exempt from visitation by the Ordinary, by the privilege of the Apostolic See, and that it is not necessary for the Bishop to visit it." In the same Licien, on August 12 of the same year, "The Sacred Congregation decreed that the hospital, which was granted an exemption from visitation by the Ordinary,

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notwithstanding the law of the foundation, can be visited by the Ordinary, provided that he acts as a visitor, and that this visitation does not violate the will of the Founders, which is guaranteed by the law itself, as is stated in chapter 8 of the decree of reform." In Abuten, on April 6, 1608, "The Sacred Congregation decreed that the Bishop cannot visit the hospital, and other similar institutions, which the canons of the Church have commended to the Ordinaries, so that the will of the Founders may be carried out." And in our matter, although Pignatelli in that consultation seems to combine these two things, namely, that all pious works benefit the Church in some way, and that there is such an exemption; yet the resolutions speak quite clearly of this exemption, and, according to the Bishops, it is necessary to provide for the will of the deceased.

[*Latin ed. p. 378*]

S78 APPENDIX 1 X, let the proceedings continue, even if the Testator herself contained such a prohibition, as the words of the Holy Congregation seem to refer only to the civil disposition mentioned above for the same purpose. And in the present case, perhaps the disposition of the Testatrix in Novella 131. Therefore, as Fagliano explains in this chapter, number 15: "Catherine of Mendoza obtained Apostolic approval; and therefore, those words were added, 'provided that the matter is not damaged by the disposition of the Holy See.'"

"Hispalensis, in her last will, provided that certain perpetual chapels should be endowed from her goods, which were approved. Indeed, from this resolution, you have a stronger argument: 'if the Ordinary can involve himself in the administration, visitation, or correction in case of negligence of the Administrators, although the Testatrix excludes the Ordinary from this office, it is expressly prohibited that the Ordinary, or any Superior, should interfere in these pious works, even for the purpose of visitation, or any other reason. And if, due to negligence, the aforementioned disposition is violated, whether by another or by the Administrators themselves, the Council of Trent (following Fagnano, chapter S, and session 22) inquired whether the Bishop is excluded from visitation in the foundation. The Holy Congregation judged that if these dispositions, with such conditions, are approved by the Apostolic See, they are not subject to the decree of the Council, session 22, chapter 8, and therefore, the Ordinary of the place cannot in any way interfere in the administration, visitation, or correction of the aforementioned chapels, except in case of negligence of the Administrators."

"Resolution from chapter 8, session 22 of the Council, in which Bishops declare themselves executors of all pious works in cases permitted by law: And the reason is requested in chapter Tua nobis de Testamentis. It is granted by law, as cited in chapter Tua nobis, that the testator mandates that the executors of such testaments, if they have been approved by the

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Apostolic See, should faithfully and fully use the aforementioned goods."

"May these things not cause you difficulty concerning what I have said above, but rather, let the words be faithfully and fully understood."

[*Latin ed. p. 379*]

They are compelled by the aforementioned warning to explain these matters to the administrators. Do not say that by this arrangement the Church violates the pious wishes of the founders, or the privileges, whether customary or otherwise, with which they endowed the institution, unless, indeed, these are expressly stated to be inviolable in the endowment and statutes, and faithfully to be observed by the Church or the institution itself. For although the founders may, at their pleasure, dispose of their property, and even, while they live, cast it into the sea; yet, if they have left legacies, or pious institutions, these must be protected, and all reasons to the contrary are deemed insufficient. If this caution is entrusted to others, and otherwise acted upon, then the Ordinary, or any administrators, must then take care that the will of the founder is fulfilled.

Among the ancient declarations of this Decree, the following are indicated in some way in the foundation, to be enumerated or specified, or to be considered among the disgraceful and impossible conditions; and those which are placed under them are those which the Ordinary is required to demand an account from the administrators of pious places.

The laws of the Council of Trent permit the Ordinary to declare whether, by Chapter 22, session 4, "Cardinal S. Praetextatus requested that it be declared whether, by Chapter 22, session 22, it is lawful for Ordinaries to demand an account from the administrators of pious places, whether these are according to the laws of the realm and of private individuals; and whether those conditions which are absolutely and without distinction attached, or which are considered and deemed to be disgraceful and impossible, or to be intended as a jest, are to be observed; it is to be answered that the Holy See desires that, acting with more caution, the declaration of the Holy Congregation be awaited."

The Congregation decided: "Chapter 9, session 22, should also be understood in cases not expressly provided for by law. And generally, the aforementioned Chapter 9 declares that it has the force even outside of visitation, and in cases not expressly provided for by law, and that it is permissible for Bishops to demand an account from the administrators of all pious places, even those of private individuals, or of public institutions, whether ecclesiastical or profane, without any distinction."

[*Latin ed. p. 380*]

380, app. ix, x. Several ancient resolutions, whether secular or ecclesiastical, concerning the administration of inheritances, are cited by Pignatellius, vol. 7, consult. 15, "if a private individual, either directly or indirectly, in-

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tervenes in the administration of an inheritance, he thereby establishes the heirs themselves as appointed administrators." Furthermore, in Milan, on August 9, 1569: Ordinaries can order that individual administrators render accounts annually. Also, concerning places which, according to the law, are subject to the jurisdiction of the Archbishop, it is doubtful whether the administrators of pious works can, by this law, claim a right that is granted to them by the Bishop; the Holy Congregation of the Council proposed resolving this doubt: "Whether, according to the terms of said chapter 9, the administrators of pious works are obligated to render an account of the inheritance of Pisar, in the commune of Bononiensi." But since the matter concerns a controversy of law, and omitting the ancient resolutions, I will adduce one more recent resolution in this case, which concerns the very chapter 9, in the "Ditissimum" which exists in Rononiae, concerning the will of the administrators. Therefore, in the case of negligence, there is no perpetual limitation, nor any ecclesiastical authority established to prevent lay curators from intervening in the carrying out of the wishes of the pious. If you wish to seek more help regarding this, see chapter 9 of the Tridentine Council. See also the resolutions concerning Francis Pissarri. However, it is expressly stipulated (which is the case excepted in the aforementioned chapter 9) that the appointed curators should render no account of the administration. Indeed, if you seek any resolutions concerning chapter 8, see the often-praised work of Lucidi, vol. I, part II, pages 479 and following.

[*Latin ed. p. 381*]

381 APPENDIX XI. CONCERNING THE NEARLY APOSTOLIC PENITENTIAL DECREE REGARDING THE IMPEDIMENT TO PUBLIC HONESTY. Concerning this Penitential Decree, we have touched upon the impediments to absolution when dealing with clandestine marriages in Appendix V. And now, in sections VI and VII, we shall say something about the impediment to public honesty concerning betrothals.

It is well known that this impediment arises either from a dispensation granted by the Confessor for the sake of conscience, with the clause that the betrothal is valid, (1) or from a marriage, even one not consummated, which is also valid, provided that the impediment remains hidden.

Indeed, such a dispensation would not have any place if this impediment to public honesty did not arise from betrothals. And it is further confirmed by a Decree, whereby the Holy Penitential Office often grants a dispensation when, with such an impediment, a marriage has taken place.

By such a Decree, a dispensation is granted to the Confessor alone, with the power to dispense and validate the marriage, with the aforementioned clause: provided that the impediment arises from clandestine betrothals, and that the nullity of the marriage contract is not discovered, otherwise, the impediment remains.

We confirm this opinion, omitting other arguments, based on the sense

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and practice of the Holy Penitential Office concerning clandestine matters.

(1) If you ask what betrothals are considered valid in order to produce such an impediment, you will find them explained with conciseness and erudition in a most worthy work, recently written on Matrimonial Dispensations by the Most Illustrious and Reverend Peter Giovine, General Vicar of Benevento, Volume I, paragraph 2, sections 284 and following. This work, which consists of two volumes, is already well known and widespread in several dioceses of Italy, and is available in Naples, at the printing house of Vincent Marchese, located on the Donnaregina plain, numbers 20 and 21.

[*Latin ed. p. 382*]

382 APPENDIX XL. It is demonstrated that marriage is impeded by the betrothal of a sister. This impediment arises from the public declaration of betrothal, for in certain cases, a hidden betrothal is considered an impediment to validity. For if the matter were otherwise, in the other case, it would be oblique; and greater dishonor would be brought upon the Christian family. Therefore, if the parties are to be joined in marriage, and if at least he who promised the marriage has doubts, it should be inquired into whether he has a daughter. This is not for an absolute dispensation and validation, but it is considered that this impediment is hidden; for if it is truly hidden, a dispensation is granted by the confessor, and this, without any imposed tax, solely for the sake of the forum of conscience. But if it is a matter of writing, it is usually done by the Ordinary. Indeed, if it is a matter of a dispensation for marriage, it is customary to commit the matter to the Ordinary. If, however, it is a matter of a marriage that is to be contracted, it can also be done by the confessor, who grants the dispensation for the impediment, and the validation, whether committed to the Ordinary or the Pastor, with special clauses and clearly and distinctly explaining from what the impediment arises, whether from betrothal or from a valid and consummated marriage. For, as is evident, the circumstances are not always suitable for this, so that even the grace of the spouses may not suffice. Furthermore, it must be explained, from the differing circumstances of persons, from whom the impediment arises; for the difficulty of granting the dispensation is greater when the matter is brought to the mother, than when it is brought to the father, and this is done with great delay, to the detriment and prejudice of souls.

[*Latin ed. p. 383*]

APPENDIX: It must also be taken into consideration that an impediment – XI. 383 – a difficulty, and that the contracting parties themselves, through imprudence, may be led to expenses which have no connection with the public good of the contracting parties, but rather are hidden, so that the grace to be obtained may be increased, and the impediment removed.

A WARNING TO THE READER: The exposition concerning the events

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of Russiam and Polonia, which is provided with documents, has been published by the printing press, as indicated by Our Most Holy Lord in the Consistorial Address of October 29, 1866, §. And all these things: "All these (evils) are manifestly apparent from the accurate exposition of all things, which we have ordered to be transmitted to you in documents as soon as possible. How long will the war, begun by the Russians, last, so that it may be completely removed from the Kingdom of Polonia? We desire that this, which has been published by the Government and our printing press, and made available to all Catholics, may delight you. The value of this work (which, although public, is not for sale) was initially hindered by the large size of its first volume; however, not discouraged, we have decided to continue this path; in each fascicle, eight pages will be devoted to the edition and successive documents of this exposition, until the edition of the work is completed. Since the exposition is written in the Italian language, and there are also more documents written in the Italian or French language, so that Ecclesiastics who do not know both languages may not be defrauded, we will add a Latin version to the text of the documents, omitting or only indicating those documents which can be omitted without detriment to the matter. We will use smaller type so that this edition is not too bulky. In order that the Readers may not have a different numbering of this work than the pages in the periodicals, we will write eight, and thus proceed.

[*Latin ed. p. 384*]

384. ADVERTISEMENT TO THE READER. "We shall take care that benevolent Readers may, at length, possess the volume separately from the Ephemerides, provided that they extract and separate the aforementioned pages from any fascicle, and collate them accurately. Thus, with little inconvenience to the Readers, they will have, besides the volume of the Ephemerides, another distinct and valuable volume of documents, which, while demonstrating the most prudent and constant solicitude of the Holy See towards that chosen part of the flock of the Lord which is afflicted by the gravest evils in those regions, also demonstrate the firmness of the Holy See in many chapters of canonical doctrine, amidst a long war and the present attacks intended to harm the freedom of the Church and the inherent rights of the same Church. We shall give a brief Preface to the volume in its proper place."

[*Latin ed. p. 385*]

385 FROM THE ACTS OF THE COUNCIL. OF MARRIAGE. June 16, and July 28, 1866. Session 24, chapter I, concerning the Reform of Marriage. A summary of the case. Honest and wealthy young people, Lawrence and Agnes, of different nationalities, having emigrated from their homeland to a place where the laws of Trent had been promulgated, traveled to England, intending to enter into marriage in violation, not of ecclesiastical law, but of

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civil law. But the matter must be explained from the beginning. Lawrence, of noble Gallic lineage, resided in the city of A., within the Gallic Empire. The young woman Agnes, of Hibernian nationality, had lived in the same city for four years with her mother, while her father was engaged in public service in Ireland, administering his affairs. Through the most honest customs of friendship, a mutual affection arose between the young people, and Lawrence asked Agnes to become his wife. Although, at the beginning, a serious difficulty did not seem to stand in the way of the marriage for Agnes' family; nevertheless, this disagreement gradually became apparent to the parents of Lawrence, so that they seemed to present an insurmountable obstacle to Lawrence. For it is known that they lived under Gallic law, which so restricts the freedom of families regarding their children, that although a valid marriage may be contracted before the Church, it is not considered valid before civil law, unless the consent of the parents, with certain civil formalities observed, is obtained. Therefore, Lawrence hoped to contract marriage with Agnes, disregarding this law of the nation, if he traveled to England with his bride, and there, observing the laws of England, the marriage would be celebrated. Agnes' parents did not object to this plan. Therefore, the betrothed departed for England, and Lawrence remained there, and Agnes remained there for scarcely ten days, and Agnes for scarcely four days, in a certain territory of England, and obtained a dispensation from the local magistrate, or...

[*Latin ed. p. 386*]

3SG. OF MARRIAGE. By means of a dispensation from the matrimonial announcements (which were to be made according to the prescription of English law after fifteen days of delay), the marriage was celebrated before the same civil magistrate. After these events, they immediately returned to the city of A. from which they had departed. Meanwhile, Lawrence was inwardly convinced that all these events had been in vain: the spouses lived separately, diligently attending to their affairs, in order to obtain the blessing from the Church. However, Lawrence's parents, upon learning this, became more determined and requested a sentence of nullity of the marriage from a lay judge, and obtained it. With matters remaining in this state, Lawrence, considering higher things, entered the religious life, and after completing his novitiate, he made his simple vows according to the provident Decretum: "Neminem latet," on March 19, 1857. However, since he was not accustomed to a stricter life, he was compelled to consider his health and, having obtained permission from the Most Holy Father, he bid farewell to the religious life. Four years later, the matrimonial question, which seemed to have been resolved, was vigorously revived. For Lawrence was considering entering into marriage with another young woman. Upon learning this, Agnes' father did not fail to send letters to France to the Bishop N., to the Archbishop, and also to certain parish priests of those

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dioceses, so that the marriage would not be celebrated, since Lawrence was not free. This was the beginning of the present controversy. The Archbishop, above all, began to take action, and, briefly recounting the matter to the Sacred Congregation of the Council, he requested that it deign to resolve the question of the validity or invalidity of the marriage. Upon receiving these letters, the Sacred Congregation wrote back that the Archbishop should conduct the proceedings, observing at least in substance the form of the Constitutions of Benedict XIV, and that he should render a definitive judgment in the first instance, unless he transmitted to the Sacred Congregation an authentic copy of all the proceedings, so that further steps could be taken. Furthermore, the Resolution of the Sacred Congregation C. was communicated to the Archbishop, which was issued in a case of a similar nature, the Gratianopolitan Marriage, on April 5, 1841 (1). (I) See Appendix XII, in which this case is fully reported.

[*Latin ed. p. 387*]

MARRIAGES. 387 Having received these instructions, when the archiepiscopal Court learned that, at the time of the marriage, Lawrence and Agnes resided in the diocese of Bishop N., where Lawrence still resided, the matter was referred there so that the Ordinary might initiate the proceedings and determine the cause. Therefore, after the proceedings were completed in the episcopal court, and finding sufficient grounds for nullity, the Vicar General issued a sentence declaring the marriage null. The Defender of the Marriages, by virtue of the Constitution of Pope Benedict, appealed this sentence to the Archiepiscopal Court, which fully confirmed the original sentence of nullity. Finally, the Defender of the Marriages appealed to the Sacred Congregation. Consequently, as is customary with the B. J., the parties were notified of the new proposal of the cause, so that, if they wished, they might present further arguments before the Sacred Congregation. The father of Agnes sent letters in which, after explaining the facts, he vehemently complained about the neglected formalities of canon law in the proceedings, and about the incompetence of the judges; and he requested that, given the nullity of the process, the cause be initiated anew in the Dublin court, or that the same cause be taken up by the Sacred Congregation. While imploring a favorable judgment for Agnes, he added that, if the marriage were not declared null, Lawrence should be declared bound by at least the bonds of betrothal to Agnes, so that, before English law, as long as Lawrence lived, she could not contract another marriage. Lawrence, for his part, appointed a defender for his cause in the city (1). DISCUSSION: DEFENSE OF LAWRENCE REGARDING THE NULLITY OF THE MARRIAGE. — Lawrence's defender, in a copious and learned defense, presented two points in particular: 1°, that the young people went to England not in order to establish a residence there, but merely to contract marriage; 2°, that they came from a place where the

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Decretal of Trent was in force. Regarding the first point, the Defender did not insist much; since the parties were not in disagreement on this matter. For indeed, (1) The cause of Lawrence was undertaken by the Reverend Salvator Martini, Advocate.

[*Latin ed. p. 388*]

388. MARRIAGES. Agnes' father asserted that Lawrence had easily persuaded his daughter to travel to England to contract marriage, thereby violating the laws of France. Regarding the second point, the Defender observed that Lawrence had previously resided in France, in the city of A., while Agnes had resided in the same city, or in Ireland. However, at that time, the Tridentine Decree concerning Marriage, promulgated in Session 24, was in force both in France and in Ireland. And with regard to France, the matter is well known, as even Pope Pius VI, of blessed memory, stated in his Instruction to the Bishop of Luçon, dated May 28, 1793, namely: "Since it is certainly known in the churches of France that marriages are celebrated before a priest and two or three witnesses, as if in execution of the Decree of the Council of Trent, it should certainly be presumed that the publication of that Decree has taken place, as is clearly stated in the Resolution issued by the Sacred Congregation on September 19, 1602, which is referred to in book 10 of the Decretals, page 47 - The publication is presumed, where the Decree has been observed in the parish at some time." The same provision is also stated in another Resolution dated March 30, 1669. It is also known that the same Decree is currently in force throughout Ireland. See, for example, P. Perrone, in his work on Christian marriage, book 2, section 2, chapter 6, article 4, edition of Liège, 1861, in note 98. Furthermore, the testimony of the Archbishop of Dublin and Primate of Ireland was presented (who was co-opted among the Cardinals on June 22, 1866), confirming the same (1).

(1) The testimony of the Archbishop of Dublin is as follows: "Paul Cullen, by the grace of God and of the Apostolic See, Archbishop of Dublin, Primate of Ireland, etc. We, the undersigned, attest that the first chapter of the Decree of Session 24 of the Council of Trent, in which marriages attempted without the presence of a priest and two witnesses are declared null and void, has been publicly promulgated for many years throughout Ireland, and is now fully in force and observed, when it comes to the marriages of Catholics. Indeed, it is known that this Decree, from the time of Queen Elizabeth, in the late 16th century, was received in several parts of the provinces of Armagh and Tuam; in the year 1775, throughout the entire province of Coshell; and finally, in the year 1827, throughout the entire province of Dublin and in those parts of the provinces of Armagh and Tuam, in which it had not previously been received, was duly promulgated in each parish and put into use. As for the diocese of Dublin,

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and the diocese of Hartford..."

[*Latin ed. p. 389*]

OF MARRIAGES. 389 Upon these points, the Defender argued that all those who, having their domicile in a place where the Tridentine Decrees are in force, depart from that place without abandoning their domicile, in order to contract marriage in a place where those Decrees are not in force, without establishing any domicile there, are considered to contract a marriage in violation of the law of Trent, and that no marriage of this kind should be declared valid. To demonstrate this principle of law, he cited several Resolutions of the Sacred Congregation, and first, the following, published on February 22, 1631, which is also reported by Benedict XIV, *Inst.* 3, 3: "The Sacred Congregation decided that a declaration should be given in the following form: A man and a woman, departing from the place of their residence, without the intention of abandoning it, and going to another parish solely with the intention of celebrating marriage there, without transferring their domicile, contracted marriage before the parish priest of that place. The matter was brought before the Sacred Congregation to determine whether such a marriage is null or valid. On February 22, 1631, the Sacred Congregation, considering what was presented, decided that such a marriage is null. This had already been decided and confirmed by the Sacred Congregation on several previous occasions, and by Urban VIII through his Apostolic Letters: *Exponi Nobis*, dated August 14, 1621, of which the following is the text: "The Most Reverend Archbishop of Cologne brought to our attention, through a recourse to our Venerable Brothers, the following doubts: First, whether inhabitants, both men and women, of a place where the Council of Trent has been promulgated regarding the matter of marriage, who pass through a place where the said Council has not been promulgated, while retaining their same domicile, can validly contract marriage there without a parish priest and witnesses? Second, what if the aforementioned inhabitants, both men and women, solely with the intention of contracting marriage, go to a place without a parish priest and witnesses, does the Tridentine law regarding clandestine marriages have full force in both cases? It should be noted that the Supreme Pontiff, Pope Pius VI, of blessed memory, through a Decree of the Sacred Congregation of Propaganda Fide, dated March 19, 1785, decreed that mixed marriages contracted in Ireland, or not celebrated with the proper form of the Council of Trent, although illicit, should nevertheless be considered valid, unless some other canonical impediment exists. In witness whereof, we have signed all of the above with our own hand and sealed it with our seal. Given in Dublin on March 8, 1808. PAULUS

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CULLEN, Archbishop of Dublin, Primate of Ireland."

[*Latin ed. p. 390*]

300. MARRIAGES. "Do they transfer [their residence], changing their dwelling place? Thirdly, what if the same individuals, both men and women, transfer their residence to that place with the sole intention of contracting marriage there without a priest and witnesses?" The Cardinals, responding to the first and second questions, stated that such a marriage would not be considered legitimate between those who transfer themselves in this way with deceit; and regarding the third question, they responded and resolved that if the domicile is truly transferred, the marriage is valid, as is more fully contained in the aforementioned decree. However, as the same exposition added, if the aforementioned Archbishop desires to communicate, with the utmost desire, this resolution concerning the aforementioned questions, for the sake of its greater firmness, with the strength of Our Apostolic confirmation, We, etc., hereby approve and confirm this resolution with Apostolic authority, by these present words. Given on the 14th of August, 1627. These Apostolic letters, having been confirmed in the form of a Brief, were again confirmed by Benedict XIV in a few Apostolic Letters from these past weeks, on the 19th of March, 1758, addressed to the Archbishop of Goan, in which, among other things, the following are read: "Meanwhile, We send to your Fraternity the Brief of Urban VIII, and therefore We command you, and your successors, to observe and implement such a Brief... and by doing so, We believe that We have satisfied the petition which you proposed in a letter of the 18th of December, 1755, in which you desired to have demonstrated to you the rule which you should follow, should it happen, as We said before, that those who, in order to avoid difficulties into which they had fallen or were about to fall, if they had celebrated their marriage in your diocese, move to a neighboring place, where they contract marriage before some Missionary, and then return to the region where their true domicile is located. However, the Defensor noted that deceit, of which mention is made in the Letters of Urban VIII, is considered to have intervened whenever those betrothed, departing from their own domicile, subject to the laws of Trent, and not abandoning them, move to another place not subject to those same laws, and there, without any domicile, or with a domicile merely established, they contract marriage. And whether the intention or plan originates from this, the marriage celebrated in this way is subject to deceit and invalid under the laws of Trent. But, in the present matter (the Orator added), neither Lawrence nor Agnes has a domicile, nor a quasi-domicile..."

[*Latin ed. p. 391*]

MARRIAGES. 391 cases have been brought before the courts in England.

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For, according to the judgment of the Sacred Congregation, in order to acquire a domicile, for the effect of which we are speaking, a duration of residence of at least one month is required, as Benedict XIV stated in the aforementioned brief documents cited above. Furthermore, Agnes resided in England for approximately three days; Lawrence, however, spent ten days, partly in England and partly also in France, consuming those days in travel. Both, however, returned to France on the same day that the marriage took place, from whence they had departed. To dispel the difficulties that seemed to be raised in opposition, the Advocate began to demonstrate that Agnes could not be considered a vagrant, that is, one lacking a domicile. Let us abstain from this question, which seems to have been raised by the Advocates in abundance. DEFENSE OF THE MARRIAGE. The Defender of the Marriage, in fulfilling his office, considered the case in two respects, firstly with regard to external matters, and secondly with regard to the internal merit of the cause, and he implored that the Sacred Congregation respond to the proposed doubt: "Let all the proceedings be presented before the Episcopal Court N., along with all that follows from the effect of jurisdiction, etc. - or - Let the proceedings be extended and completed - or - Negatively." The Defender of the Marriage maintained that the Episcopal Court N., where the cause was initially judged, lacked jurisdiction to judge; for, he said, by a Rescript of the Holy See, which we have cited above, the power to complete the proceedings had been delegated to the person of the Archbishop; therefore, neither could the Archbishop himself commit the case to another Judge, nor could the aforementioned Court N. judge the case according to ordinary law, since it had been specially entrusted to the Archbishop (1). But he further enumerated several defects in the proceedings that affect the substance. He stated that there was a lack of formal citation, so that at least Agnes could appear in court; there was a lack of a declaration of the dispute; there were a lack of proofs; these defects affect the substance of any proceeding. (1) The response given to the Archbishop was not a delegation, much less a special delegation, which occurs when someone is chosen because of their particular suitability; but it was a simple response, so that the Archbishop, who had presented the matter, would act according to the law, observing the substantial provisions of Benedict XIV, as has been stated in similar cases. On this matter, see the Resolution in the case of Gratianopolitan, which is referred to in Appendix XI.

[*Latin ed. p. 392*]

392 MARRIAGES!». And if one considers the Benedictine Constitution, which at least should have been observed in its essential points, the Defender maintained that it had been utterly disregarded. For, according to the sacred canons, and according to the norm of that same Constitution, a sworn response from both parties is required; a formal examination of witnesses is required; furthermore, the same Constitution commands that

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the Defender of the marriage bond be present in court whenever it may occur; that he be summoned to any judicial act; that he be present at the examination of witnesses; that he defend the validity of the marriage with his voice and in writing, and that he produce all that he may deem necessary to support the validity of the marriage. Our Defender contended that these things had not been observed. Furthermore, the same Constitution prescribes that the Defender, as a necessary part for the validity and integrity of the judgment, must always be present in court, whether one of the spouses is there, who is bringing suit for the nullity of the marriage, or both, one of whom is there for the nullity, and the other for the validity of the marriage. But the Defender, when such a duty is entrusted to him, shall take an oath to faithfully perform his office; and whenever it may happen that he must be present in court to defend the validity of a marriage, he shall again take the same oath: and whatever is done in court without him being lawfully summoned or notified, is declared null, void, and of no effect... as if that party, whose summons was desired, and who, according to the prescriptions of the laws and canons, was absolutely necessary to be summoned or notified for the legitimate validity of the judgment, had not been summoned or notified. Moreover, the Defender asserted that the Defender of the marriage bond had not taken an oath in the process of establishing the marriage, nor had he been summoned to any judicial act; nor had he presented any interrogatories. With these defects noted, he concluded that the process was afflicted with every kind of nullity, and did not present the appearance of a judicial process. After these remarks, proceeding to the intrinsic merit of the case, the Advocate invoked the doctrine defended by the most learned Sanchez de Matrim, book 3, section 18, number 27. Here, the author, treating our question from a point of law, asks: "If inhabitants of places in which the Decree of Trent is obligatory come from places where it is not obligatory, can they, according to the law of that place, contract marriage without a priest and witnesses?" To this question, he answers: "If... "

[*Latin ed. p. 393*]

MATRIMONIES. 393 "Those who intend to establish their dwelling there, it is certain that they can acquire property there without a parish priest and witnesses; for they become inhabitants of that place, and are therefore no longer bound by the laws of their former domicile. However, the difficulty arises when they only pass through. Sanchez, before expressing his own opinion, refers to the opinions of other authors and the reasons they have given, which, since they determine the question of law, we do not wish to pass over in silence for the sake of completeness. Therefore, the author proceeds in this manner. "Petrus de Ledesma, in *De Matrimonio*, question 45, article 5, last point... " holds, in accordance with the opinion of those whom I mentioned in n. 17, that pilgrims, while

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absent from their proper domicile, are bound by the laws of that place; therefore, a marriage entered into without a parish priest and witnesses is invalid. And it seems that Henriquez, in *Liber Decimus Undecimus de Matrimonio*, chapter 3, n. 8, and Manuel, *Summa*, 1 volume, 2nd edition, chapter 219, n. 2, at the end, say that once the Tridentine Decree has been publicly proclaimed in a certain parish, it affects the parishioners, no matter where they may move; only those who are setting out with the intention of establishing their domicile there are excused. And this is proven, because those arriving from places where the Tridentine Decree is in force have already incurred the obligation of observing that Decree; therefore, no matter how they arrive, even as a mere passing through, they are bound to observe it. And this is confirmed, because the Tridentine Decree invalidates clandestine marriages and renders those very persons incapable of contracting such marriages; but this incapacity, affecting the person, since it is a personal matter, follows the person wherever they go; therefore, once a person has become incapable of contracting a clandestine marriage due to the legitimate publication of the Tridentine Decree, they will not be able to contract such a marriage anywhere on earth. Secondly, because that person has already been bound by the Tridentine Decree in their own country; therefore, a change of location does not end the obligation; just as once fuel has been applied within the sphere of a fire, the heat is preserved, even when transferred to another location outside that sphere. Finally, because that pilgrim, wherever they may be, is a member of the Church, and is subject to it; therefore, after the legitimate promulgation, they are bound everywhere on earth by the aforementioned law of the Church." With this opinion and the reasons explained, Sanchez makes his own position clear with these words:

[*Latin ed. p. 394*]

#94. OF MARRIAGES. "However, it is more probable that [a marriage] is not required to be contracted before a parish priest and witnesses." This is proven first from the statements in number 18, where we defend, as more true, that those absent from their domicile are not bound by the laws of that domicile. Secondly, because, even if we were to believe that they are bound by the laws of their domicile, yet, with regard to the formalities observed in contracts, only the laws of the place where the contract is celebrated are considered: but the place where this marriage is entered into does not require the formalities of a parish priest and witnesses for the validity of the marriage, since the Decree of Trent does not obligate there; therefore, etc. Some limit this opinion, arguing that if one goes to those places with the intention of defrauding the Decree of Trent, in order to be able to freely marry there without a parish priest and witnesses, then it would be invalid; first, because fraud is not permitted to anyone, Cap. Sedes. Cap. But from the tenor of the Rescript, they seem to be defending that if this marriage

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is valid, then... However, this limitation seems objectionable to me; and I believe, although it is done with that intention, to be able to freely contract without a parish priest and witnesses, that the marriage is valid. First, because he who uses his right cannot be said to be committing fraud, so that the effect is impeded by that reason, Regula, Nullus videtur 55 ff. de Reg. iuris; Leg. 3 vers. Is tamen ff. de Libero homin. exhib. - there - it does not seem to have evil intent when one uses his right. Therefore, because with many Doctors, as they cite Covami v. 4 Decret. i par. cap. 8. 2 num. 10, and Sarmiento lib. i select. c. 6. n. 8, they defend that a marriage contracted in articulo mortis [at the point of death] makes the children legitimate, defrauding the substitute: for it is a licit fraud, since the contracting parties are using their right. Therefore, when those who go to places where the Trent Decree is not in force, with the intention of contracting without a parish priest and witnesses, are using their right, since they have the right to contract in that way, it will be a licit fraud, and that reason will not impede the effect or validity of the marriage. Secondly, because a good or bad intention can contribute to committing, or not committing, a sin, but it does not invalidate the act, since the intention remains in the mind; nor does it affect the external act: therefore, if that marriage, without a wicked intention, is valid, that intention will not impede it in any way; as many teach regarding the establishing of an obligation, and among them, Alphonse de Ligurie.

[*Latin ed. p. 395*]

MARRIAGES. 395 "Varro, book 3 on Restitution, chapter 5: If, with a perverse intention, [a person] does not [undertake] the obligation to restore [something], then the obligation does not arise from that intention."

"The praised author, having explained his opinion, thus refutes the arguments of Peter of Ledesma. "To the arguments of the preceding opinion, number 27 should be answered. To the first, I say that those who have come [to a place] have contracted the obligation to observe the Tridentine Decree, as long as they are in those parts in which it obligates them; otherwise, when they arrive in other places where it does not obligate them. To the second, I say that when an impediment is established absolutely and simply, it follows any person who goes there; otherwise, when it is established by way of law; for just as that law does not obligate in those places, so neither does the impediment or annulment of an act obligate there, nor does it follow the person, unless when that person is in the places in which that law has the force of obligating. To the second, I deny the consequence, because the obligation arising from the force of this Decree is from those effects which depend on their causes in their coming into being and continuing. For the obligation arising from a law lasts as long as the law lasts, and when the law ceases, it ceases; therefore, just as light produced from a flame is extinguished when the air is removed outside the sphere of light, so this

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obligation expires when the person migrates outside the territory in which this Decree is in force."

"Finally, the consequence is denied: for the ecclesiastical law does not bind in a place where, by the will and disposition of the Church, that same law does not have force, as happens in places where it has not been accepted or has not been publicly promulgated."

"Having presented this opinion of Sanchez, which the orator extolled with praise, although the Holy Congregation followed the previous opinion based on several resolutions presented to the contrary; and although the orator had nothing to oppose to them, he tried to refute them, as if he were not dealing with the matter, implying that in the present matter, any fraud against the law of the Church had been avoided, since the marriage had been contracted in England solely to avoid the operation of the civil law of France. Finally, the orator began to discuss another question, concerning a person considered to be vagrant and without a domicile, from which question, as we have said, we abstain."

[*Latin ed. p. 396*]

396. MARRIAGES. A Doubt. "Whether it can be established that a marriage is null." RESOLUTION. — The Sacred Congregation, after considering the case discussed on June 16, 1866, judged it fitting to respond: "Given the prior authorization to use the documents in question, and having heard the words of the Most Holy [Father], we affirm." PROCEEDINGS. — The Defender of the Marriage Bond, appealing again, requested that the Most Reverend Archbishop of Dublin, who was present in Rome at that time, inform Agnes of the Resolution issued, and at the same time, warn her of the new proposal in the case, so that she might, if she wished, present further arguments before the Sacred Congregation regarding her rights. Then, the Most Reverend Prelate, and also Agnes' father, submitted written statements to the Sacred Congregation, in which, besides the most serious complaints with which Agnes' father contended concerning the conduct of Lawrence and his family, nothing further was presented that could be referred to the validity of the marriage. However, Agnes' father stated that, having heard the opinion of a jurist, according to English laws, her marriage was valid and could not be legally annulled in any way, and therefore, she should be forced to remain unmarried as long as Lawrence lived. He also requested that, for the sake of the grave detriment to the family and due to the promises of the betrothal, Lawrence be compelled to celebrate the marriage with Agnes. Therefore, although this was outside the matter in question, these new arguments were not omitted by the Advocates; and the reasons presented by both sides are given below. The Defender of the Marriage Bond, who was also Agnes' Defender, based his argument on the text of chapter 1, section 1, and also on the passage concerning the betrothal of minors in 6°, in which it is stated that the betrothal of minors, made in

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the present tense, is, due to the lack of age, considered to be a betrothal for the future; and the same, it seemed to the Orator, could be said if the marriage is null due to clandestine circumstances, especially because, if the act cannot be valid in the way in which it is performed, it can at least be valid in another way, as much as is possible. Furthermore, he stated that a contract of betrothal is included in the marriage contract, because when someone consents to marriage, they intend to be joined in marriage both now and in the future; therefore, these words: "I take you as my wife," also contain the following meaning: "I take you in the future."

[*Latin ed. p. 397*]

397. MARRIAGES. Finally, the Defender of the Faith implored the Emos Fathers to at least consider the matter of equity, which does not permit that honest young women should be abandoned to such detriment. On the contrary, the Defender of Lawrence, observing that this question does not pertain to the present matter, nevertheless cited the teaching of the Holy Congregation, as reported by Coscius in *De Separatoriis*, Book 1, Chapter 14, paragraph 11 and following: "Above all, the resolution of the Holy Congregation of the Council in *Nullius*, June 8, 1595, is most clear, in which it judged: 'A marriage contracted in the present tense, even if followed by consummation, before a priest, is both invalid and null, and does not resolve into a future betrothal, as is stated in Book 8 of the Decrees, page 130...' Therefore, the opinion of those Doctors who hold that a clandestine marriage of the first or second species is resolved into a future betrothal, so that the contracting parties are not thereby bound to validly contract again, is entirely to be rejected; first, because a greater number of Doctors affirm the contrary... and second, because the judgment of the Holy Congregation of the Council prevails over the opinion of the Doctors, which, as mentioned above, settled this controversy; and also, in Granada, in which, after proposing the following doubts: I. 'Is the contracting party, who has not observed the solemnity of the Council, at least bound by a natural obligation, by virtue of which he can be compelled by some ecclesiastical remedy to observe the promises?' To I, it was judged: 'He is not bound even by a natural obligation.' II. 'What if an oath has been interposed in such a contract?' To II, the response was: 'The same, even if the contracting party had sworn.' III. 'Does such a contract have any validity at all as a future betrothal?' To III, the response was: 'It does not have validity.' IV. 'Does the contracting party sin mortally by not fulfilling his promise?' To IV, it was judged: 'He does not sin.' The original of this Conciliar Resolution can be seen in Volume 72 of the Positions of the Holy Congregation of the Council, session 24, chapter 1, pages 108 and 169." Thus far, Coscius. To this, the Defender of the Holy Office added the authority of the Sacred Rota, which faithfully follows and venerates the judgments of the Holy Congregation

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of the Council:

[*Latin ed. p. 398*]

398. MARRIAGES. For in the Roman Decrees on Matrimony, on December 11, 1719, before Coric, no. 20, the following is stated: "Indeed, concerning the repeated second resolution regarding the exclusion of coercion in order to again consider either the dowry or the marriage itself, it was briefly established due to that irrefutable opinion, which, whatever few things the Defenders of Joanna have alleged, generally prevailed among Doctors and Tribunals, namely that a marriage contracted against the form of the Council, even after consummation, is not dissolved, and produces no nullity, nor does it incur any natural obligation, as is most frequently decided by the Holy Congregation of the Council from extensive decrees, etc." With these and other arguments presented by the Defenders, the matter was again brought up: 1. Question: "Whether one should adhere to or depart from the decisions in this case." RESOLUTION. — The Holy Congregation, the cause having been examined, responded on June 28, 1866: "In the decisions, and regarding the alleged damages to the parties, they should use their rights as and to the extent that they are legally due." FROM THIS, IT IS UNDERSTOOD: 1. Those who have their domicile where the Tridentine Decree is in force, and who travel to another place to more freely enter into marriage, do not, by contracting a marriage there prior to any domicile established according to canonical jurisprudence, invalidate the marriage, even though the Tridentine Decree does not apply there (1). (1) If Sanchez had intended to explain the meaning of the Decree of the 24th session of the Council of Trent, which was so wisely defended by the Fathers of Trent to prevent and eliminate clandestine marriages, he would not have explained it according to the common rules that apply to local laws; nor would he have made his opinion more probable. Indeed, considering the meaning of the Decree, the opinion contrary to that affirmed by the Holy Congregation is suggested by the publication: for although the Holy Synod did not wish to obligate those entering into marriage by that Decree except when they are publicly announced in each parish, in order to avoid greater evils; nevertheless, it commanded all Ordinaries to take care that this Decree should be made known to the people as soon as possible, and to be explained in each diocesan parochial church, and that this should be done at least once a year, and then as often as they deem it expedient. Therefore, the intention of the Fathers of Trent was that this Decree should effectively apply to all subjects of the Church, so that those places in which it has not yet been enforced should be considered as exceptions, which, according to the Tridentine norm, should eventually be rectified.

[*Latin ed. p. 399*]

BIATRIMONH. 399. It makes no difference whether the betrothed have

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acted in good faith, doing so in order to free themselves from some less equitable impediment. For marriage is not rendered invalid by fraud with intent, but by an act which would easily frustrate the law of Trent. III. Therefore, the Decree of which we are speaking does not only bind persons because of their location; but it also, to some extent, directly affects those very persons, until they acquire a new right to contract marriage in another territory according to the norms of the old law. IV. This new right is that which arises from domicile, by which betrothed persons become residents of another place (1). V. Furthermore, it must be understood that a marriage which is considered to have been contracted clandestinely does not obtain the force of betrothal; indeed, the celebration of such a marriage terminates the obligation of betrothal which preceded the celebration (2). VI. Therefore, each of the pretended spouses is fully free, unless they are bound by some other title to something (3). VII. For that faculty of contracting marriage in such places, according to the old canons, is nothing other than a benign tolerance, which should be removed when the opportunity arises. Therefore, the rules which are applied to the observance of other local laws concerning foreigners do not seem to be applicable in the same way, since they are valid in different places with equal right. 2. This is suggested by the most serious words of Trent: Those who otherwise... will attempt to do so, the Holy Synod renders them absolutely incapable of doing so, and declares such contracts to be void and null, as it makes them void and annuls them by the present Decree. The incapacity with which the Holy Synod affects the inhabitants where the Decree is published, to contract marriage otherwise, would be easily removed if the betrothed were to immediately evade the law by simply leaving the territory, without abandoning their domicile, in order to contract marriage in a different way: which seems to proceed openly contrary to the meaning of the Decree. (1) See what we noted on page 108, first note. (2) The principle which the Defender of the cause adduced in the second proposition of the cause, by saying: if the act cannot be valid in the way in which it is performed, it must at least be valid in the way in which it can be; has no place, when the act is null by reason of a defect in the form, which, as is commonly said, gives being to the thing; the Abbot of Palermo, in chapter "Concerning the Office and powers of the delegated judge," says: "The obligation of betrothal ceases, because betrothals, like other contracts, have a definite nature, from which they are ordered towards the celebration of marriage, and once completed, nothing else seems to be required by their nature. Therefore, if a marriage is celebrated and is found to be null, the betrothals do not revive." (3) As stated in the second proposition of the cause, the Holy Congregation responded: "In the decisions, and with regard to the alleged damages, the parties may use their rights as and to the extent that they are legally entitled." Agnes asserted that, according to English laws, the marriage was valid; she could

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have used this to obtain compensation for damages.

[*Latin ed. p. 400*]

400. MARRIAGES. VII. Finally, it must be understood that the acts of a process which must be performed to render a judicial sentence are entirely distinct from those acts which are performed without observing at least the substantial, and indeed canonical, form. VIII. The acts of an Ordinary process, since the Ordinary acts as a judge endowed with jurisdiction, lead to the issuance of a sentence based on those same acts, and once issued, the sentence has greater legal effect. IX. Conversely, acts of a second type are not, by themselves, sufficient to establish the framework of a judgment to which a judicial sentence can be attached; they can only serve for a private investigation of the matter, and if a judicial sentence were to be rendered based on such acts, it would be subject to censure (1). - To act judicially, if I am not mistaken, has a twofold reason: first, before the civil tribunals of France, when they have rendered a sentence that is unfavorable. For if marriage was valid before those same laws according to English laws, it does not appear why the civil laws of France should not consider it valid. Indeed, according to what is called international law, contracts are generally held to be valid in any place where they were initiated, provided that the formalities prescribed in those places have been observed. Therefore, it was more likely that Agnes could have prevented Lawrence from taking another wife before the same civil tribunals, and could have compelled him to make reparation for damages. Secondly, she could have brought a lawsuit for divorce before the English tribunals, based on the fault of Lawrence, who did not maintain the marriage contracted there. I say that these seemed to be more appropriate means of obtaining reparation, while the marriage remained null before the Church, due to the impediment of clandestine marriage: we set aside the right that civil authority might claim for itself. (1) It often happens that ecclesiastical courts conduct processes irregularly, and they may not be able to do otherwise: for the ecclesiastical jurisdiction is either not recognized or not supported by the governments; hence, if the vicars general send citations to the parties or witnesses to appear before them, they often act in vain, because the cited persons do not appear, nor is it expedient to compel them by censures, because they might be disregarded. Indeed, sometimes they cannot compel witnesses to swear to what they testify before the judge, either because they refuse without penalty, or because the law of the government prevents it. In such and similar circumstances, the Holy Congregation, after examining the truth of the matter, if it appears from the acts completed without judicial form that it is sufficient, consults with the Holy See regarding the possibility of rendering a sentence notwithstanding the irregular form of the acts; or it writes again, instructing that the acts of the process be completed or supplemented, giving at the same time special instructions. There are many

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examples of this; and in our journals, there are no cases of marriages that lack such instances. It also often happens that a party or witness who is to be subjected to a judicial examination is far away, and then the practice prevails that the judge, who is preparing the process, in order not to appear to be invading another jurisdiction, sends letters to another ecclesiastical judge, under whose jurisdiction the person to be examined resides, urging him to have that person submit to a judicial examination before him, according to the questions.

[*Latin ed. p. 401*]

401. SEPARATION OF THE MARRIED. January 27, 1866. Session 24, chapter 4, concerning matters of marriage. After twelve years of peaceful conjugal life, and having had five children, domestic tranquility was disturbed between the spouses Livius and Caia. For Livius, the husband, approached the Parish Priest, accusing his wife Caia of the crime of adultery, and requesting a separation. The Parish Priest, as was fitting, made every effort to foster peace and harmony; however, since he could achieve nothing, either by himself or through others, he brought the matter to the ecclesiastical court. Hence, legal proceedings were initiated according to the norms of law, and the husband, appearing before the Judge, testified as follows: "For nearly a year, I have observed a noticeable change in my wife's behavior. Sixteen years ago, I had a certain Titus working in my workshop, who engaged in an improper relationship with my wife, Caia. I learned of this relationship through the following circumstances: 'One evening, I entered the house and opened a certain window, and I saw Titus fleeing near the wall... I returned and rebuked my wife, who did not say a word to me. I then left the house and said to my wife: 'Leave this house if you wish to have the opportunity to kiss your children.' After two hours, I returned home and said to my wife these words: 'Wretched woman!' She said nothing in response and, rising from her seat, fled the house. The following morning, I dismissed Titus from my workshop, and he only said these words: 'I expected this.'" Summary of the case. (When a case concerning marriage is being heard), the Defender of the Marriage is involved. See also the Instruction of the Sacred Congregation, which we cited in Votum I, page 439, prepared according to the norms of the canons and the Benedictine Constitution, with all else omitted. Before the judgment, the marriage was either presumed to be valid, or null; if valid, it is known in canonical jurisprudence that the wife follows the forum of the husband, as we also noted on page X, note 2. If, however, the marriage is considered null, then... In the present case, among the defects that were exaggerated by the Defender of the Marriage, the husband, Agnetis, falsely alleged the incompetence of the Judge; for, it should have been considered null, and Agnes, who was preventing Lawrence from taking a new wife, was the plaintiff, who must follow the proper forum of the cause. Acts,

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volume I, page XIX, 26.

[*Latin ed. p. 402*]

402. SEPARATION'S TRIAL. The wife, summoned to court, when asked by the Judge, replied: "My innocence in this matter of honor is so certain that I desire the case to be examined with the utmost rigor of the law, so that my innocence may be proven." Regarding the facts that the husband alleged, she responded to the Judge: "I observe that Titus frequently visited my home, and it was his custom to take papers from the desk, as he did on that day..." To prove the wife's infidelity, the husband first presented four, and then eight other witnesses, who, with the exception of two whose whereabouts were unknown, were examined under oath. The testimonies of these witnesses, when collected together, agreed on these points: the woman was diligent in the home, devoted to the education of her children and to domestic duties; they had indeed seen Titus entering the house frequently, both when the husband was present and absent; but they had suspected no wrongdoing, because Titus was considered one of the husband's most esteemed employees, so much so that he seemed like a brother; nor had they ever seen any ambiguous gesture, or any indecent act, or heard anything that could be considered improper. One witness, however, differed from the others, and recounted certain things that seemed to suggest an excessive familiarity between the wife and Titus; but this witness, according to the testimony of the parish priest, was a concubine of a certain soldier. While these procedural acts were being carried out, Livius refused to grant the wife alimony pending the trial, unless she returned certain ornaments that the woman had taken with her when she fled the house; and the same man, under the pretext of hiring a governess for his children, brought a certain young woman into the house; which caused such a great scandal among the neighbors that the civil authorities expelled the young woman; but Livius, evading the vigilance of the authorities, called her back to his home. Furthermore, Livius did not hesitate to boast to his friends about his shameful relationship with this young woman; and he dared to deny this to the Judge when questioned. Having reached this point in the proceedings, the husband, as plaintiff, requested that other witnesses be examined under oath in court regarding the wife's infidelity; but the court, rejecting such a request from the husband, proceeded to:

[*Latin ed. p. 403*]

SEPARATIONIS TORI. 403 decreed: "Having considered that the sole accusation brought by the plaintiff against his wife is that she violated the conjugal fidelity owed to him with Titus; that the fact upon which the accusation is based is the discovery of Titus in a remote room of the house, while the wife was found in another room; Having considered that the plaintiff admits that, until that day, he was secure regarding his wife's honor; that

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the suspicion against Titus, who had frequented his family for many years, in his presence, never gave rise to any suspicion in the plaintiff's mind of a true love affair with his wife; Having considered that the circumstances of place and time, under which Titus was discovered, provide no reason to suspect him, who for many years had regularly frequented the plaintiff's house, with the plaintiff's knowledge; moreover, that on that very day and occasion when Titus was found in the house, the plaintiff, as he himself admits, remained completely calm, both regarding him and regarding his wife; indeed, shortly afterward, he traveled with Titus, and received him as before; Having considered that the witnesses brought by the plaintiff to prove a pre-existing relationship offer no assistance to the plaintiff; on the contrary, from the testimonies of four witnesses, it results that the wife's conduct towards Titus does not even suggest such a relationship; that the only witness who does not support the wife adduces a fact that is not sufficient to induce a reasonable suspicion; that, lacking this support, it is unnecessary to judge whether this witness can be admitted in court due to her way of life; Having, on the contrary, considered that the plaintiff has confessed to a relationship he had with a certain dancer; that, in fact, from the information presented, the plaintiff's relationship with said dancer appears to suggest a character of adulterous habits; This court decreed and pronounced, as it does and pronounces, that the claim of the man N. N. against his own wife N. N. is to be rejected, as being devoid of foundation, and that he is to receive his wife back; saving the wife's right to take action against the husband in the event of the husband's contumacy, against the husband himself in a legal action for separation based on the pretext of malicious desertion."

[*Latin ed. p. 404*]

404. CONCERNING THE QUESTION OF SEPARATION. Having delivered this judgment, Livius was criticized for neglecting to examine other witnesses whom he had named; therefore, it was requested that the validity of the judgment be declared null. The cause, having been appealed to the Holy See, was transmitted with the procedural documents. The parties were granted the opportunity to present further arguments, to the extent that they wished to exercise their rights before the Sacred Congregation. Livius alleged that his wife had confessed her fault before the Parish Priest, and that she was now living with a woman of bad repute; he also presented certain extrajudicial depositions of witnesses. The wife, on the other hand, presented nothing further, merely stating that she had dismissed a certain dancing girl, so that Livius would not have her give birth in his house. Having heard the matter again according to custom, the cause was debated under the following doubts.

SYNODIC DEBATE.

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ON MATTERS PRESENTED REGARDING THE INCIDENTAL QUESTION. – In favor of Livius, it was argued that, by virtue of his office, regarding the presentation of new witnesses, even if he had already presented one or two witnesses in the cause, he was not, by law, prohibited from presenting a third witness, according to chapter 15 on Witnesses, and chapter 55 of the same title, from which it is admitted that even a fourth witness may be presented if the prescribed formalities are observed: thus it is written in the aforementioned chapter: "Beyond the third presentation, witnesses should not be presented further in the cause, unless he who requests it swears that he has not, either by himself or through another, withheld any testimony, nor has he been questioned, nor has he, by deceit or any artifice, elicited the fourth presentation, but because he has not been able to obtain those whom he desires to present anew." But, on the contrary, it was observed that it is not, by law, the case that further presentations of witnesses are to be denied if they are necessary, either because the multitude of witnesses must be restrained, or so that, under the pretext of desired proof, lawsuits are not unduly prolonged, according to chapter 36 of the same title, in which chapter the Pope, permitting the litigants to present a fourth witness with the observance of the legal formalities, added this limitation: unless, perhaps, the Judges deny the fourth presentation because they wish to restrain the excessive multitude of witnesses; where the Glossa, adding rights, says: "For the same reason, the Judge could deny the third, and even the second."

[*Latin ed. p. 405*]

SEPARATIONIS TORI. 405 v (Indeed... from which the same cause is present in the second, or in the third, as in the fourth.) This is consistent with civil law, Law 1 ff. 'de Testibus' [§]. However: there it is stated: "Although in some laws, the largest number of witnesses is defined, nevertheless, by the Constitutions of the Princes, this permission is restricted to a sufficient number of witnesses, so that judges may regulate, and only allow the summoning of that number of witnesses which they consider necessary, lest the power to harass people be extended by an excessive number of witnesses."

ON MATTERS NOTED CONCERNING THE MERIT OF THE CASE. — Considered in the merit of the case, Livius was said not to have proven his action or claim; therefore, it is a principle: if the plaintiff does not prove, the defendant is absolved. But, assuming a hypothesis in which Livius could have supported his claim, the following were observed to be relevant. Although the adultery of one spouse gives the other the right to perpetual divorce, this right is lost if the other spouse is also guilty of the same crime, chapter. Significasti, 4 de Divortiis, in which it is read that Alexander III. wrote: "that if it is known that the woman herself committed adultery, the aforementioned husband is not obliged to receive her back, unless it

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is established that he himself committed adultery with another." Innocent III. adds the reason for this provision in chapter 6 and 7 de Adulteriis, namely: that mutual crimes extinguish each other, which is consistent with the law Viro et uxor. 39 ff. It does not matter whether one committed the offense first, or more often, or more seriously than the other, Sanchez lib. 10 disp. 6, Pirhing in lib. 6 tit. 19 n. 8, Reiffenstuel ibidem nn i 80, 59. Indeed, a crime occurring after the judgment renders it prejudicial to the spouse in whose favor the judgment was rendered, as Fagnanus teaches in c. Ex Uter. 5 de Divori, n. 9. Therefore, it was concluded: if, therefore, a spouse who is judged innocent, and to whom the possibility of living separately is granted, is nevertheless compelled to cohabitate because of adultery that he subsequently commits; much more so in the present matter, the judgment of the court of which we are speaking should seem to be in conformity with the law, which did not favor Livius, who, with his lenient affections for adultery, did not succeed, due to lack of proof.

liutiiu. I. "Whether there is room for the examination of new witnesses in this case." or rather...

[*Latin ed. p. 406*]

406. ON THE MATTER OF SEPARATION. II. "Whether the judgment of the Court should be confirmed or overturned" in this case. RESOLUTION. — The Holy Congregation, having knowledge of the cause on January 27, 1866, responded: To I, negatively. To II, affirmatively regarding the first part, negatively regarding the second part; and furthermore. FROM THIS, ONE MAY GATHER: I. That the production of many witnesses in a judicial process can be rejected by the Judge, if that production appears to be restrained, or is entirely useless for the purpose of defining the matter. II. That it is not relevant whether this occurs during the third, or even the second, presentation of witnesses; for it suffices that the reasons for such a situation exist, so that the prudent judgment of the Judge may prevent excessive production. III. In the present case, the third presentation of new witnesses to prove the request for divorce was rightly rejected as useless. IV. For indeed, several witnesses presented by the plaintiff himself, both first and second, not only did not testify to the adultery of the wife, but they demonstrated that the plaintiff's suspicions were without foundation. V. Especially since, from a well-known fact, it was shown that, during the litigation, the plaintiff himself was adulterous; in which case, if the wife were proven guilty of adultery, the spouses would be obliged to live together. VI. For such crimes are extinguished by mutual compensation (1). (i) It seems to offend against reason that certain matters, which, through mutual compensation, should be extinguished, are nevertheless brought before the court; but this is found to be the opinion of the learned jurist Charles Berardi, in vol. 2, diss. on "Comm.," who in chapter 7, section 2, wrote: concerning the "dissolution of marriage," and the plaintiff himself is tainted, as is stated in canon 2 and

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2 in the rescript of Imperator Antoninus apud s. Augustinum in lib. 2 de adulterinis coniugiis, cap. 18, in causes 32, g. 6, c. 4 and 3 de divor. c. 6, and 7 de adult, not as if it were understood. For these two principles are not of the same kind, and although some have written incorrectly that they are opposed in every way, it should be heard. But if this principle is true, the other seems to be false, provided it is rightly...

[*Latin ed. p. 407*]

407. DISTRIBUTION. July 8, 1865. Session 24, Regarding Reparation, chapter 1, section 2. Summary of the case. Three German canons, two of whom also held parish duties, were unjustly and violently expelled from Italy by demagogues, and they were not permitted to return, under penalty of imprisonment or death. During their entire absence, they were deprived of their emoluments by the other canons, yet they remained associated with each other.

• This passage is repeated in Law 39 and following. "Debt settled" - there - "When a husband and wife accuse each other of wrongdoing, both are declared to have granted a cause for divorce; this must be understood in such a way that neither party seeks redress under the law that both have violated, for mutual offenses are dissolved by mutual compensation." Law 10 and following, regarding Compensation. "Neither party should obtain anything from their petition; for they are considered to be compensated for each other by the common wrongdoing, injury, and detriment." This principle appears to have originated from the compensation that occurs between debt and credit: for in Law 1 and following, regarding Compensation, "Compensation is the contribution of debt and credit to each other." This compensation is easily extended to negligence, as it is written in Law 10 and following, regarding Compensation: "If both partners have shown equal negligence towards the partnership, it must be said that they are no longer obligated to each other; by the very law of compensation, the negligence is considered fulfilled." Similarly, it is demonstrated that if one party receives something from a common asset, and the other party exhibits such negligence that it is of equal magnitude, compensation is considered to have been made, and by the very law, they are freed from each other." This principle is used by the authors of moral theology. Furthermore, this doctrine regarding compensation is extended to fraudulent acts; in Law 36 and following, regarding Fraud, it is written: "If two persons commit fraud, they do not act against each other regarding the fraud." And therefore, regarding mutual offenses, or rather, mutual injuries and mutual detriments, arising from equal offenses: hence the principle: "Equal offenses are dissolved by mutual compensation": how wise and equitable were the laws of the ancient Romans! Therefore, mutual offenses were considered to be compensated when considering the effect of the offenses, and for this reason, the ancient Roman laws denied an action. Furthermore, an action

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was denied for another reason, namely, out of contempt for the law; for it seemed just that neither party should seek redress under the law that both had violated. These principles were used by the Apostle in Romans 2:1: "You who judge others, condemn yourself; for you do the same things that you judge." And then, the Divine Master in John 8:3, when confronted by the women accusing the adulteress, invoked the law, saying: "He who is without sin among you, let him be the first to cast a stone at her."

[*Latin ed. p. 408*]

408. OF DISTRIBUTIONS. These are called "accidental" distributions, that is, those which arise from the associations of the deceased, anniversaries, public supplications, and other sacred functions: and these benefits were divided among the four remaining canons after the death of two canons. Therefore, three canons, considering themselves to be the rightful heirs of their deceased brothers, asserted their right to these benefits, and two doubts were presented to the Sacred Congregation of the Council, which are now being considered. The vicarius capitularis, being asked to express his opinion, abstained. However, the canons who were denying the accidental benefits seemed to be adhering to the capitular constitutions, in which, however, no mention was made of cases of forced absence... although certain other cases of legitimate absence were considered, in which canons received accidental benefits. A lengthy discussion ensued. Several points were raised concerning the matter, but it was observed that all choral benefits originate either from endowments, or from legacies left by pious benefactors for Masses, and for the performance of other sacred functions. Regarding the question of these benefits, it should be noted that they are of two kinds: some are fixed, arising from the perpetuity of the legator's intentions; others are uncertain and variable, arising from alms, or from temporary legacies, and from the piety of the faithful. However, the Sacred Congregation has often declared that, in certain specific cases of absence, benefits arising from fixed contributions should be paid to the absent canons, provided that the will of the testators is not violated, but that benefits arising from unfixed contributions are not due to the absent canons. For example, in Rome, in the records of canonical rights of May 5, 1703, in Lib. Decret., 53, page 186, the following question was proposed: "Can a canon of Strada, to whom, due to infirmity, an indulgence has been granted to be excused from the choir and other duties, also participate in the benefits for laudations, capitular meetings, acts of the chapter, anniversaries, festivals, processions, and for any functions performed in the church, so that he should receive all benefits of any kind and species, commonly called 'communes,' and even..."

[*Latin ed. p. 409*]

DISTRIBUTIONS. 409 1)) Concerning actual distributions and candles:

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"The response was affirmative, even regarding alms, except for anniversaries and other non-fixed occasions, and in those cases where the Testators had made different provisions." In Trani, on January 13, 1703, when it was asked, "Whether to the Archpriest, during his infirmity, all [distributions] are due, and whatever daily distributions, and especially mortuary and anniversary [distributions]:" the response was: "Affirmative, according to the custom of the Church." Furthermore, it happened in the declarations concerning the Indult of Jubilees granted; thus, in Aquipendium, on the day of the Indult, April 1, 1719, regarding the question: "Whether the same [person] should participate in the emoluments pertaining to anniversaries, associations of the dead, if [they] are not involved in functions:" the response was: "Affirmative, regarding the first part, provided that it does not contradict the will of the Testator or donor; regarding the second part, negative." Moreover, it was not generally to be doubted that the cause of enmities, sedition, and unjust deportation should be considered among the legitimate causes of absence. Indeed, the Holy Congregation, having been asked on several occasions whether those who had been deported or exiled, in order to escape the French invasion, or who had broken their oath, or who were in exile, had received the fruits of their benefices and distributions during their absence, consistently issued an affirmative rescript. And indeed, such causes of absence are reduced to the cause of bodily necessity, as Fagnanus states in chapter *Licet de Praebendis*; John Andrew, in chapter one, concerning the clergy who do not reside, in 6. But the cause of bodily necessity grants the right even to those emoluments which come from anniversaries, as, according to chapter one, concerning the clergy who do not reside, in 6, several Doctors state. Boniface VIII, in that chapter, after stating that distributions are to be given only to those who have attended the divine offices, adds: "But whoever otherwise receives anything from these distributions (except those whom infirmity, or a just and reasonable bodily necessity, excuses), does not acquire dominion over the things so received..." Regarding the distributions also to be given for the anniversaries of the deceased, we decree that the same should be observed. Thus, in Fondi, on July 3, 1734, when a certain Canon, due to the cause of enmities, having received a wound, was absent and remained away from the place of his benefice, he requested the distributions, and doubted...

[*Latin ed. p. 410*]

4 1 0 CONCERNING DISTRIBUTIONS. Then follows the question: "In what cases are daily distributions due?" II. "And what fruits are due in the case of:" The answer is: Regarding I, affirmatively, up to the present time; concerning the future, only for two months. Regarding II, affirmatively, according to the norm for those absent due to infirmity. With these and other considerations added, the following doubts are to be resolved:

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I. "Whether those absent from the choir during a period of absence may receive distributions from deceased members' associations, anniversaries, processions, votive masses, and other similar functions." II. "And from what time should resident canons restore to the absent members the distributions previously received?"

RESOLUTION. – The Sacred Congregation of the Council, on July 8, 1865, responded as follows: Regarding I, affirmatively, concerning all fixed offerings, provided that a special disposition of the testator or donor does not prevent this during the period of absence. Regarding II, provision is made as stated in the first point.

WE GATHER: I. Legitimate causes for absence from the choir not only grant the right to receive the fruits and daily distributions; but also other extraordinary benefits and all emoluments derived from fixed offerings, unless a special will or intention of the testator or donor prevents it (1). II. Such causes justify the absence of canons compelled by demagogues during the same period of absence. III. Present canons who have improperly received the same emoluments of the absent are obligated to restore them.

(i) See what we said in Volume L, page 289, in the note.

[*Latin ed. p. 411*]

411. REDUCTION OF MASSES. May 6, 1885. Summary. A pious testatrix, in her will, appointed her citizen Titus as the executor, and bequeathed to him certain buildings, with the obligation to fulfill the burdens which Titus already had, and those which she further imposed upon him, which are as follows: 1° A daily Mass with the offering of a determined alms; 2° An annual allowance in favor of the testatrix's handmaid, as long as she lived; 3° A certain annual alms to be paid to a convent of nuns. These burdens, indeed, Titus, the legatee, fulfilled until this time, but he stated that he had lost money from his own goods in repairing the bequeathed buildings, and therefore he was compelled to suspend the obligation of the Masses, from the first of June of the past year, in order to recover his money; because, he said, if he had fulfilled those burdens in this deficiency of income, he would not have provided enough for the mind of the testatrix, who certainly did not intend that the legacy itself should be a burden to Titus. However, he noted that the buildings themselves were still in a very deplorable state. Having presented a note of income and expenses, he supplicated that the Most Holy Congregation would deign to reduce the number of Masses. After customary requests were made to his Ordinary, who is the Archbishop, this one replied: "From the calculation made by the Orator, it is determined that the buildings yield 522 scudi annually, and after deducting the expenses, only 48 remain, which seems to me too little, and less consonant with the condition of the legatee." Furthermore, extraordinary expenses, which he was recently compelled to incur in repairing the buildings, have almost disappeared, leaving him with practically nothing of what he had

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hoped to receive from the legacy. This, indeed, I believe, both because of the Orator's integrity, and because the buildings are deteriorating. These are the things which I must report to the Most Holy Congregation, so that the Orator's requests may be considered, and a just judgment made.

WHAT WAS OBSERVED AGAINST THE ORATOR FROM HIS OFFICE.—The Most Holy Congregation constantly decreed that the supreme wills of the dying must be diligently observed according to the norms of the law; especially if...

[*Latin ed. p. 412*]

4 1 2 REDUCTION OF MASSES. This concerns the oblations for Masses. However, if, at times, a reasonable necessity arises for a reduction, in the present case, such a reason does not appear to be present. Indeed, according to the calculation of the Orator, if full faith is given to it, after deducting all burdens and expenses, there remained 48 scudi, for which reason it would not be proper to call the bequest useless or detrimental. But furthermore, among the expenses calculated, the Orator noted a certain sum as an annual administrative premium. Nor was the vital service rendered to the servant overlooked, a service which was temporary; therefore, considering the perpetuity of the bequest, this should be taken into account for the benefit of the same bequest.

THINGS CONSIDERED IN FAVOR OF THE ORATOR. – On the contrary, if the extraordinary expenses, for which the Orator was recently forced to provide for the building, have resulted in almost no profit, and if the building itself is constantly deteriorating, it seems just that the burdens should be reduced, in order to consider either the satisfaction of the burdens or the benefit of the legatee: for no one is considered burdened unless he has been honored. Furthermore, when a just and reasonable cause intervenes, it is often considered that the Sacred Congregation should grant permission for a reduction of Masses.

DECREE. – The Sacred Congregation of the Council, after considering the petitions on May 6, 1865, decreed: "Let it be read and notified to the Most Reverend Archbishop."

FROM THIS, THE FOLLOWING ARE GATHERED:

I. To the legatee, to whom the burden of Masses is imposed with the bequeathed assets, it is not permitted to suspend the celebration of Masses by his own authority.

II. There is no place for a grant of reduction of Masses, if the income of the bequest is sufficient and more than sufficient to fulfill such a burden.

III. A lesser enjoyment of the bequest, especially if it is temporary, cannot

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be a cause for a perpetual reduction.

[*Latin ed. p. 413*]

413 IX CONGREGATIO!! DE EPISCOPORUM ET REGULARIUM. DE EXPENSIS. Die 24 Augusti 1866. Compendiumlaeti. Etiam inter viros sanctos, contentiones interdum intercurrunt. Duo conventus Ordinis mendicantium, A et B, qui disputabantur de iure quaestuandi, remigerunt ad Sacram Congregationem Episcorum et Regularum, ut definiatur, sicut est consuetudo. Conventui A, rescriptum favabilem obtinuit, praesertim ob preces municipii, in quo conventus A. contendebat se habere ius quaestuandi. Cum cuilibet sit licitum eleemosynam dare cui vult, huius principi Sacra Congregatio adhaesit, et respondit die 1 Septembris 1865: "Annuitur precibus municipii (N. N.)". Ipse autem conventus A., qui, agitans questionem cum aliqua anxietate animi, advocatos adhibuit, obtento rescripto, instavit pro eius exsecutione coram tribunali ecclesiastico, a quo petiit ut conventus alter, B, qui in causa succiderat, cogeretur ad omnes reiiciendas expensas litis, etiam extraiudiciales. Tribunal ecclesiasticum, iuxta morem, visis et consideratis, sententiam emisit, quae in favorem cecidit eiusdem conventus A., contra conventum B. Pro exsecutione autem huius sententiae, in eo quod ad restitutionem omnium expensarum attinebat, conventui B. coacta est annua praestatio solvenda a nobili familia. Conventus B., qui rescripto Sacrae Congregationis contra se dato, pacem quaesiverat, sententiam ecclesiastici tribunalis graviter tulit, et statim per viam recursus ad Sacram Congregationem confugit, contendens ex more Sacrarum Congregationum locum non dari restitutioni expensarum, et postulabat ut amoveretur sequestrum, quod conventus A. praestationi annuae sibi debitae apposuerat. Videndos.

[*Latin ed. p. 414*]

4 1 4 CONCERNING EXPENSES. A concise discussion. The reasons presented by the Convent A., which was in difficulty, were as follows: first, the serious difficulty of covering the expenses of the lawsuit due to its poverty; second, a legal argument, claiming that it was legitimate to demand the aforementioned expenses from the Convent B, which had lost the case. It was stated that the case had not been conducted as is customary, but in accordance with the order of law; and that the matter could not have been handled otherwise, since it had been unsuccessfully attempted to reconcile the parties for many years. Therefore, it required the assistance of legal representatives; and the expenses should be borne by the one who lost the case. However, on the other hand, the Convent B argued that this was not the custom of the Holy Congregations; and that no examples of this could be cited. MATTERS NOTED BY OFFICE. – Since the entire matter depended on knowledge of the practices prevalent within the Holy Congregations,

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the following observations were made. Although he who loses a case is held liable for the damages; and "he who has rashly brought his adversary to judgment ought, as is decreed in Law 79 ff. concerning Judgments, and elsewhere, and in the final section of the Code concerning Ordinances, to pay the expenses of the lawsuit to his adversary," nevertheless, such a discipline, which is common in tribunals, cannot be applied to the Holy Congregations, which, although they bear the appearance of tribunals, are nevertheless administrative and guardians of things and persons in the name of the Pope; and especially in the case of the Holy Congregation of Bishops and Regular Canons, as stipulated by Sixtus V., appeals and complaints of the subordinate are heard summarily and in extrajudicial form, as explained by Cardinal De Luca in the report of the Roman Curia concerning the Holy Congregation of Bishops and Regular Canons, page 7. Moreover, if the case concerns Regular Canons, in which they act with somewhat greater freedom, as the same Cardinal De Luca states in the aforementioned passage, number 17, with these words: "Since this Holy Congregation generally knows the cases of the Regular Canons, not only those concerning public matters regarding the governance of the Order as a whole, or between one Order and another, but also private matters between the Religious themselves, concerning elections and other occurrences, it determines them summarily and directly, based solely on the facts."

[*Latin ed. p. 415*]

ON EXPENSES. 415. At times, with extrajudicial proofs, or with sufficient justifications presented through Scripture, without however employing any formal process, with a Notary, and with judicial procedures, since the Secretary or Cardinal Prefect retains the documents and records the information, thus, in a certain manner, acting also as a Notary. Hence, it happens that it is not necessary to engage forensic advocates and to submit processes, allegations, and other similar matters to the printers, as is done in other tribunals. Therefore, if the parties involved in this matter incur expenses, and they do so voluntarily, they cannot legally demand reimbursement of these expenses from the party that loses the case. It is therefore necessary to reiterate the practice that prevails throughout the Holy Congregations, according to which the expenses of controversies are generally not reimbursed by the losing party. This also applies even if the cases are instituted according to the order of law; hence, with regard to the practice of the Sacred Congregation of Bishops and Regular Canons, if the cases have been instituted according to the Decree issued in the year 1834, only Article 16 deals with this matter: The Advocate appears before the Arbitrators, who, as mere executors of the Resolution of the Sacred Congregation, decide on the matter (1), and nothing more. However, in the matter about which we are presently speaking, no action had been taken according to the order of law, but only economically, although the Con-

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ventual Advocate had presented to the Sacred Congregation an allegation prepared by advocates and printed, with the title "Plea for the Truth." This type of practice was confirmed by a specific example, which occurred in the case of the City of Castellante, regarding Expenses, which was considered by the Sacred Congregation of Bishops and Regular Canons on December 14, 1855, and a summary of which is as follows. A certain widow was recovering her dowry and other property from the inheritance of her deceased husband. Since her husband had testified in a pious cause, and the ecclesiastical court itself had presented this case as a pious cause, the widow declined to appear before that tribunal, and directly appealed to the Sacred Congregation of Bishops and Regular Canons. The Sacred Congregation accepted the case, in order that it might be decided according to the order of law. The case was presented twice, with the allegations of both parties. Certain judicial acts also intervened, which were defined by the ordinary judge. (1) See Appendix XIII, in which we refer to the complete Decree.

[*Latin ed. p. 416*]

416 CONCERNING EXPENSES. After obtaining a victory, the woman turned to the ecclesiastical judge for the enforcement of the sentence and the reimbursement of the costs of the lawsuit. The ecclesiastical judge, although aware that, according to the Holy See, there was no basis for the reimbursement of these expenses; nevertheless, due to particular circumstances that had intervened in the matter, he refrained from rendering a judgment on this issue. The woman returned to the Holy Congregation, and indeed, she did not deny the prevailing practice of the Holy See, but she insisted, above all, that she had been forced to decline the judgment of her own court, which was involved in the case as a party, and that, in the meantime, she was obliged to bear the expenses that the lawsuit entailed. Furthermore, she added that the aforementioned expenses were depleting everything for which she had contended. However, the Holy Congregation, after reviewing the matter and considering the question: "Whether there is a basis for the reimbursement of expenses in this case," decided to respond that, considering the particular circumstances, there was a basis for the reimbursement of expenses for half of the amount. This exception, and indeed for half of the amount, confirms the rule. Furthermore, the practice of the Holy See and the Council is not different, if certain causes are excepted; and for this matter, an example was taken from a case pending before the same Holy See concerning the expenses of the Most Reverend Legate of Rome, on June 16, 1817. With these observations, the purpose is to resolve the question: "Whether and how the complaints of the Reverend Father (B.) against the sentence... and the subsequent attachment" should be considered.

RESOLUTION. — The Holy Congregation of Bishops and Regulars, on August 24, 1866, and subsequently, responded affirmatively in all respects,

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revoking the attachment.

FROM THIS, IT MAY BE GATHERED: I. The Holy Congregations, although they prefer the appearance of a tribunal, do not nevertheless follow the same judicial practice that other tribunals follow and should follow.

[*Latin ed. p. 417*]

ON EXPENSES. 4-17 II. For they, as administrators and guardians of things and persons, act in a special manner in the name of the Supreme Pontiff, according to the special faculties granted to them by the Holy Pontiffs (1). III. Controversies which are settled by them are sometimes ventilated according to the order of law, and sometimes treated economically (2). (1) This is why the Holy Congregations do not have to render an account of their resolutions, as other tribunals must do in detail, and they do not have to show the reasons derived from the established process which constitute the form of the judicial sentence. For the Holy Congregations, whether they decide on matters of law or interpret the law, do so in the name of the Roman Pontiff, who is above the canons; therefore, even though they may recall the same things through the knowledge and discussion of the case, which is often not brief, they are not obliged, and it is often not appropriate, to render a detailed account, as they would have to do if they were acting merely as tribunals. (2) Among the controversies which are referred to the Holy Congregations for settlement, some, either by the nature of the case, or rather by the contention of the parties, are ventilated with greater rigor and legal formality; that is, when the litigating parties appoint curial advocates, "who act as lords of the cause, and the cause is argued through chosen lawyers." Then, a formal creation of advocates is made to prepare doubts or questions on which they must then argue. It often happens that the advocates themselves dispute with each other in formulating these doubts, and do not agree; then, such formulas are composed ex officio, taking into account this disagreement, as is stated in Acta, vol. II, chap. XIX, in the presentation of the case before any Holy Congregation. After this, a time is determined in which the case is to be argued before the Holy Congregation. In the meantime, the advocates prepare their arguments with summaries which contain documents or records of the process, and submit them to the printers; and many other things are observed, which would require a very long exposition if all were to be referred to here in detail. On the other hand, cases which are not ventilated with this rigor are said to be treated economically, meaning that the order is not observed; for each Holy Congregation has its own order of procedure, which it faithfully observes, but because, whether with legal formality or not, the case proceeds, all is done ex officio. In these cases, the Holy Congregations request the Ordinaries to conduct the process, if the matter concerns something that requires a formal process, or to report and inform the Holy Congregations about what the parties present: they

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inquire about the opinions of the same Ordinaries or other Superiors, and other things of this kind, so that they may come to a sufficient knowledge of the matter; and then, if necessary, they also hear the opinions of their Consultors; otherwise, observations of fact and law are briefly presented ex officio. Then, after examining the truth of the matter and discussing the case, the Holy Congregations judge; or, according to the principles of justice and equity, they decide, as is appropriate for the nature of the matter, as is frequently the case in the Holy Congregation of Bishops and Regulars, 27.

[*Latin ed. p. 418*]

418 CONCERNING EXPENSES. IV. Whatever method of proceeding is determined in a controversy, the Holy Congregations universally decide, except in one or the other kind of cause, that the party obligated to reimburse the expenses of the litigation of the other party who has won, is not bound to do so (i). CONCERNING THE ACCEPTANCE OF AN OFFER, COMMONLY ABOVE THE SIXTH. On the 24th of August. The nuns of the monastery N. wishing to sell a certain piece of property, invited all who wished to submit written and signed offers within a specified time, after which the letters containing such offers would be opened, and considered. Finally, one person made an offer: Philip, who offered 382 shillings. Having obtained permission from the Most Holy Congregation and the Reverend Fathers, the nuns obtained it, with a Rescript: "With the favor of Philip... at a price of not less than 520 shillings, subject to the right to the twentieth and the sixth, having been granted the faculty of reducing the terms to ten days for the twentieth and the same for the sixth." Publicly displayed, according to custom, were the programs or edicts, first for the twentieth, and in these edicts, the nuns added again the clause that the offers would be considered. Several other people made offers, the largest of whom offered 412 shillings, which offer, having been reported to Philip, was considered as accepted. Furthermore, after the edicts for the twentieth, other edicts were affixed for the offering of the sixth within a period of ten days, with the same clause added in the same manner. Other offers were also made, the largest of which, that of Thomas, amounted to 600 shillings, which was also reported to Philip by the nuns, according to the expressed law, that it would be considered as accepted.

(i) I said "except in one or the other kind of cause," because in the Holy Congregation of the Council, in matrimonial causes, which do not pertain to economic matters, there is a place for the reimbursement of expenses, as also in causes of spoliation, maintenance, and offenses.

[*Latin ed. p. 419*]

41$ CONCERNING THE ACCEPTANCE OF OFFERS, ORDINARILY AFTER SIXTH. The offer should be considered, while the monastery,

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in the meantime, remains in its freedom to proceed as it sees fit. Philip refused this new offer, and was released. Therefore, Thomas, the sixth bidder, remained the victor. A few days later, after the aforementioned ten days had elapsed, other bidders appeared, of whom the largest offer was made by Fructuosus, who offered 720 scudi. Knowing this, Thomas issued a protest against the monastery, arguing that, having elapsed the useful term, he was the definitive bidder, and that the monastery could not proceed with further actions against the right that he had already acquired. With all matters suspended, the nuns from the monastery inquired as to what course of action they should take in this case. After being asked for the ordinary procedure for information and a vote, and after hearing those who were concerned, the following question was presented to the Sacred Congregation. A summary of the discussion. THE RIGHTS THAT THOMAS ALLEGED IN HIS FAVOR. It was argued that Thomas, the Notary who received the offers, had, of his own accord, caused a new dispute to arise after the useful term had elapsed, as specified in the edicts. However, he maintained that the very account of the events was a defense of his claim to a just right. For it is just that, in contracts concerning Church property, the same Church should seek a resolution, but within the limits of the law and of honesty: which will occur when all attempts at offers, according to the rules in force in this matter, have been exhausted. To support his argument, he cited the authority of the Most Reverend Aloysius Trombetta, who in a recent work, often praised by us (1), entitled "Praxeos regulae circa contractus rer. eccles., c. 4 §. 15 p. 120," wrote: "It remains now to consider whether, besides the twentieth and sixth attempts, any further ordinary attempt may be granted, as is commonly said, 'di soprasesta'? It must be denied altogether. For although the twentieth and sixth attempts, since they were made irregularly, have been renewed entirely by order of the Holy Congregations; nevertheless, where they have been made legitimately, they remain entirely firm, and should not be further publicly affixed with a subsequent addition, commonly called 'di soprasesta,' lest the contract with..." (See the Opinion on pages 502 and following of these ephemerides).

[*Latin ed. p. 420*]

4 2 0 CONCERNING ACCEPTANCE OF OFFERS, COMMONLY AFTER SIXTH HOUR. The interests of the Church and of the offerers may be prolonged indefinitely. In the case of a very serious injury, the customary remedy is to seek the rescission of the contract, as far as the law allows. This is established in the aforementioned Benedictine Constitution, number 7 (1).

THINGS OBSERVED IN FAVOR OF AND AGAINST. In favor of the same Thomas, a certain Resolution of the Sacred Congregation of Bishops and Regulars, dated November 5, 1832, appeared to be relevant. It con-

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cerned the transfer of a certain hospital to a leasehold. After the completion of the twenty-sixth act, and having considered the offer of the sixth hour made by Paul Felix, a certain Joseph, who had remained among the offerers, offered a larger sum, which exceeded the sum offered by Paul in the sixth hour. The question was raised, to whom should the house be assigned, and with whom should the instrument be stipulated, either with the first offerer, Paul, or with Joseph. The Sacred Congregation responded: Since, according to the form of the Benedictine Constitution, no further option is given to the contract after the twenty-sixth act, the stipulation should be made in favor of Paul Felix. However, in favor of the pious party, and therefore in favor of Fructuosus, who was above the sixth hour, it was observed that he had included in each invitation a clause stating that he would consider the offers, as it seemed most advantageous to him. This should not be considered forbidden, since the owner of the property is the moderator and arbiter, and he can impose conditions that he knows are more beneficial to his own interests; but it is the buyer's right to abstain from the offer under those conditions. This is also noted by the aforementioned Author in *Praxeos regni*, page 77, who, distinguishing between invitation notices and deliberative notices, generally advises that the owner, who proposes the notices to receive offers, should do so with the presumption that he will consider them (1).

(1) The words of this number 7 are as follows: "So that, after the three months have passed for the sixth hour, which period has been shortened in the present case to ten days), and after deliberate consideration, there is no longer any place for the rescission of the contract (by way of experiment), but it remains firm and irrevocable throughout the entire period established, according to the form and conditions expressed in the deliberation. However, the right remains to the Chamber to challenge the contract in the case of an injury exceeding half the sum, as far as the law allows, and as far as the law allows, and according to the Apostolic Constitutions." See, if you wish, the complete Constitution, which we have included with the related Decree of the Sacred Congregation in Volume 1, page 251 and following.

[*Latin ed. p. 421*]

CONCERNING ACCEPTANCE OF OFFERS, COMMONLY ABOVE THE SIXTH PART. 421 This, in order to investigate the value of the thing, rather than to precisely effect a sale. This distinction, as the aforementioned Author observes, is maintained by Cardinal De Luca, in *De Emptis et Vend.*, book 7, section 3, number 5, who says: "In the other case, namely, in the case of a voluntary offer (at an auction), the distinction is made as to whether it is expressed in the edict or proclamation that the goods will be given to the one who offers more, or not: if it is expressed, then the seller cannot, without just cause, repent... but otherwise, if it is not expressed, then it can be said that he who proposes the offer, or who

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causes the edict or proclamation to be made, has done so rather with the intention of exploring the value of the thing than of selling it; thus, there is not that obligation which he is considered to have contracted with future bidders, whenever it is declared that the goods will be given to the one who offers more or less." This distinction has been generally followed by the Holy Roman Rota, as in the case heard in Romana on June 22, 1761, number 4, before Herreros. Nor did the response, which at first appeared to be an obstacle, seem to be so; namely, that the monastery proceeded by force of a Rescript of the Holy See; and therefore it should conform itself to the Benedictine Constitution and the general Decrees of the Holy See, which determine the rule to be followed in such alienations of goods. To this difficulty, it was responded that the Rescript of the Holy See, by which the faculty of alienating, saving the right of the tenth and sixth part, is granted, does not prevent the use of greater precautions for the benefit of the local pious institution. And indeed, even the Apostolic Executor of such Rescripts, who is bound to observe the form of the Rescript to the letter, cannot impose damaging conditions in the execution of the Rescript contrary to the form of the same Rescript; nevertheless, he is not prohibited from adding other conditions that may be for the greater benefit of the Church. Indeed, that clause which the monastery appended to each act, if it had not been expressly stated, would seem to be implied. For, until a contract is perfected by the Beneplacitum Apostolicum and mandated for execution, the right which the first offeror acquires is nothing other than the right of preference; for he is preferred whenever he wishes to equate new offers that have arisen, but in such a way that the local pious institution does not lose its freedom, but enjoys its privileges; cited Author, page 33, numbers 4 and 5, Cardinal Petra in *Commentaria ad Constitutionem Apostolicam*, volume 1, section 3, number 4.

[*Latin ed. p. 422*]

422 "SUPER ACCEPI". OFFERINGS. Commonly, after the sixth hour. In the present matter, however, the contract was not perfectly executed, since no house had been assigned to any of the offerers, but all remained in suspense, and the declaration was being sought from the Holy Congregation; therefore, the matter was entirely to the advantage of the monastery. Considering these and other circumstances, the following question is to be resolved: "In what manner, and with whose favor, is the house to be deliberated upon in this case?"

RESPONSE. – The Holy Congregation of Bishops and Regulars, having knowledge of the matter on August 24, 1866, replied: "No one among the offerers has the right to demand deliberation; however, considering the particular circumstances, if Thomas (N.) has an offer of 720 [scudi] within ten days from the date of notification, it should be offered to him; otherwise, to Fructuoso (N.), and so on."

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FROM THIS, ONE MAY GATHER:

I. In the alienation of Church property, in order to complete the act of alienation after obtaining the Apostolic Approval, it is not necessary to proceed without observing the intervals of time, which are called the twentieth and sixth, according to the rule of the Benedictine Constitution and the general decrees of the Holy Congregation of Bishops and Regulars.

II. To the Church, or pious institution, which is considered as a minor, belongs the right of postponement to a certain day, and the benefit of restitution in full.

III. The time to be waited for, in the case of the twentieth [day], has the nature of a postponement to a certain day, just as the experiment of the sixth [day] has a certain appearance of restitution in full, and as if, in previous acts of alienation, the Church had been harmed.

(1) We presented the aforementioned Constitution, or Motu Proprio of Benedict XIV, and the general decrees of the Holy Congregation of Bishops and Regulars, in Volume I, pages 251 and following. These Constitutions and Decrees establish the rule to be followed in carrying out such alienations, after obtaining the Apostolic Approval; since previously, the method to be followed in this matter had not been accurately determined, and there was greater opportunity for abuses that could harm the Church.

(2) Postponement to a certain day is described in law 1 ff. de in diem ad: "Postponement to a certain day means that the land, 'centum' [one hundred], is yours to purchase, unless someone makes a better offer before the Kalends of January next, by which the property leaves the owner's possession." Some property can be postponed to a certain day in two ways, according to 1. 2 ff. h. t.

[*Latin ed. p. 423*]

ON ACCEPTANCE OF OFFERS, COMMONLY AFTER THE SIXTH AUCTION. 423 IV. The bidder who has won the auction does not have the right to complete the contract, unless, after all regular attempts have been exhausted, the item in question has been definitively awarded to him. V. Nor should the same bidder, to whom the item has not been awarded at least initially, be considered to have the right to subsequently receive the award, whenever the Church abstains from accepting the item. He has only a certain right of priority, whenever the Church itself deems it appropriate to award the item to someone else. IV. In the present matter, considering the opinions of the advisors, new offers made after a reasonable time should be considered by the Sacred Congregation, (1) either through a sale that is pure, provided that the sale is rescinded if a more generous offer arrives within the established time; or through a conditional sale, which becomes pure if a better offer is not made by another buyer within the established time: thus, as stated in "lieta lege 2": "Whenever land is offered

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for sale for a certain period, whether the purchase is pure, but subject to a condition of rescission, or whether it is a conditional purchase, is a matter of debate. And it seems to me more accurate to consider what has been done: for if it is done in such a way that, with a better condition offered, one departs from the purchase, then the purchase will be pure, subject to a condition of rescission; but if it is done in such a way that the purchase is completed unless a better condition is offered, then the purchase will be conditional." In contracts concerning Church property, offering for a certain period makes the contract only conditional, as stated in § Z of the aforementioned Motu Proprio of Benedict XIV, so that the right of anyone who has initially been considered for the property, through that deliberation, ceases, whenever another person appears within a twenty-day interval, who offers at least one-twentieth of the original offer. The sixth auction, however, seems to have a semblance of restitution, as if the pious person who contracted, having been harmed in at least one-sixth of the price through previous actions, is almost restored to his previous state, so that at least in that respect, he seems to be seeking to recover his loss. From this, it appears that the clause added by the advisors, that offers should only be considered, was superfluous, since it seems that this has already been decided by law. Someone might perhaps, at first glance, not consider these precautions to be unreasonable; but daily experience shows that such precautions are hardly sufficient. (1) In practice, the Sacred Congregation has established that, after the sixth auction has passed, no one should be allowed to offer an increase under the same title. But if someone presents a new offer sheet, which significantly increases the price, "then all offers will be sent to the Sacred Congregation: and the Sacred Congregation, with the matter still at hand, can, according to its prudent judgment, either reject the new offers, or order that they be presented again," as stated in § 4 of the General Decrees of the Sacred Congregation, which we cite. Reject.

[*Latin ed. p. 424*]

424. ENDOWMENTS. August 2, 1863; September 16, 1864; and September 7, 1866. Summary of the case. A certain priest from the town of N. founded a lay chaplaincy on a designated altar within his property. He granted the active right of patronage, namely the right to nominate the chaplain, to certain of his relatives, but he granted the passive right of nomination to the priests of his town. He also assigned certain Masses to be celebrated by the chaplain. Furthermore, he stipulated that the chaplain should be removable at the will of the patron, with or without cause. A serious controversy arose regarding the right of patronage, both active and passive, which was brought before the Sacred Roman Rota on December 14, 1860. The question at issue was: "By whose favor does the right to nominate to the chaplaincy consist, so that both the institution and the induction may

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be granted?" To this, the Sacred Rota responded: "Affirmatively, by the favor of Francis, and the induction should be granted to the priest Ignatius." This judgment became final, as the case was dismissed without appeal. Francis, who was declared or confirmed as the patron by this judgment, had already nominated the priest Ignatius to the chaplaincy. After this judgment, Ignatius took possession. However, such new offers, if, after due consideration of all the circumstances, they do not appear to be of value, should not be accepted, nor should they be accepted if the matter is not yet settled. On the contrary, if the matter remains unsettled, and the offers are significantly greater, especially if the preceding acts of bidding have not been properly conducted, new notices should be posted. In the present case, the proposed emolument from the new offers was not considered to be of value to the monastery; nor was the right of anyone infringed, especially since Philip, who was to receive the house, refused to accept the sixth part offered by others. On the contrary, the new posting of notices did not seem useful in the current situation, if it would allow Fructuoso, who was to receive the sixth part, to equalize the new offer. Furthermore, in my opinion, the procedure of the monastery through the clause added does not seem appropriate, as it either reverts to what is already provided for by law; or, if that clause is intended to achieve something more, it seems to undermine the established procedure for the alienation of Church property, because the concept of a deadline and restoration to the original state would be lost.

[*Latin ed. p. 425*]

CHAPLAINCIES. 421> was presented; but in the same act of nomination, the Patron had also granted a certain young man named Aloysius, who was descended from the founder, the right, conditioned on his ability, to enter into possession of the chaplaincy, should Ignatius be removed. Therefore, Aloysius, who had already opposed Ignatius in court before the tribunal of the Sacred Roman Rota, having subsequently received the sacred Tonsure, entered the path of ecclesiastical service, and petitioned the Sacred Congregation, so that the chaplaincy might be conferred upon him, because he had become capable of possessing it through the reception of the Tonsure. Furthermore, several reasons of compassion were presented, especially the poverty of his family, which, with the adversities of fortune, was now pressing upon them. Three times, after repeated prayers from Aloysius, who was commendable in character and morals in every way, this case was presented before the Sacred Congregation under the question: "Whether and in what manner there is a place for the dismissal of the chaplaincy on the part of Ignatius, and for the granting of possession of the same to a Cleric Orator in this case." To which the Sacred Congregation responded on August 14th: negatively in all respects. The matter was again presented on September 16th, 1864, with the response: "decided." Finally, for the third time, the matter was presented again shortly after.

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A SYNOPTIC DISCUSSION. THOSE WHO WERE ADVOCATING FOR ALOYSIUS. — Aloysius presented several reasons to demonstrate that the chaplaincy should be granted to him; among these, the last was not the least, "that Ignatius, as a priest, was detaining the chaplaincy contrary to the will of the testator; and in this matter, Aloysius noted that the sentence of the Tribunal of the Sacred Roman Rota, favorable to Ignatius, had passed into a res judicata, which is held as true; therefore, it was not possible to dispute the legitimate possession of Ignatius." However, the reasons that could help Aloysius were reduced to these. Since the right to enter into possession of the chaplaincy had been granted to Aloysius by the Patron, as soon as he became capable, the question was raised as to whether that ability, which he had attained through the reception of the sacred Tonsure, was sufficient for him to possess the chaplaincy. In favor of Aloysius, it was argued that the lay chaplaincy in the present case was not, in fact, a sacerdotal chaplaincy, but one by habit, so that it was sufficient for him to have it, even if another celebrated Mass. This was demonstrated by—

[*Latin ed. p. 426*]

426. OF ECCLESIASTICAL BENEFICES. The words of the testator, by which the chaplain is burdened with the perpetual obligation to celebrate certain Masses, or to have them celebrated, establish the ecclesiastical benefice. For he who uses these words establishes a benefice, and does not necessarily require that the chaplain actually be a priest. Therefore, even if Aloysius were not considered legally qualified, he could, notwithstanding the law of the foundation, become qualified by the grace of the Holy See. For this grace is somehow attached to the law. Indeed, when dealing with a cleric who is related to the founder, he should be preferred to an external priest, as Pitonius writes in *De Controversiis Patrum*, Allegation 33, number 18: "The law of the foundation, which requires a priest, is undoubtedly to be observed where it is not a matter of blood relationship between the cleric and the priest from outside." Furthermore, there were other reasons, drawn from the poverty into which the family of the founder had fallen, which prevented them from supporting Aloysius in his pursuit of studies; and also from his excellent morals and the service he rendered to the Church, for which he was highly commendable.

THINGS THAT WERE FAVORABLE TO IGNATIUS. Ignatius, who was sent into possession of the ecclesiastical benefice after the judicial sentence, maintained that Aloysius had not become qualified, alleging that he had received the tonsure, since the law of the foundation stipulated that Presbyters and priests were to be appointed to the benefice; these words clearly indicate that the ecclesiastical benefice is actually a priestly office. Furthermore, Aloysius could not become qualified by grace to the detriment of Ignatius; for the Holy See does not usually infringe upon the rights of a third party. With these and other considerations, the doubt is to be resolved.

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"Whether, and how, one should depart from the previously reached resolutions..."

RESOLUTION. The matter was again presented to the Holy Congregation on September 7, 1866, and a rescript was issued, containing the following:

FROM THE PRECEDING, WE GATHER THE FOLLOWING:

1. A lay ecclesiastical benefice, which actually requires a priestly quality, cannot be held, without a dispensation from the Holy See, by a simple cleric.

[*Latin ed. p. 427*]

CHAPTER ON ECCLESIASTICAL JURISDICTION. 427 II. This dispensation is not granted by the Holy See in cases where a prior judgment exists, even though canonical proceedings are held to be necessary for its implementation. FROM THE SACRED CONGREGATION FOR ECCLESIASTICAL IMMUNITY. On Immunity. Dated February 28, 1837, and May 28, 1838. Summary of the Case. Within the jurisdiction of the Roman Pontiff, a treacherous homicide occurred near the house of a certain parish priest, caused by an explosion of a fiery projectile. The parish priest, hearing the explosion, rushed to the scene and administered the sacraments to the already dying man. Investigations were conducted by the civil authorities, and eventually Titus and his son Caius were found to be guilty of the treacherous homicide. However, in the course of the criminal proceedings, the accused themselves named the parish priest as an accomplice, and other witnesses also named the same parish priest, as if he had previously consented to this treacherous homicide. The judge initially appears to have refrained from pursuing the prosecution, but subsequently ordered its execution, as is prescribed in these cases according to the sacred canons in the Constitution of Pope Pius VII, and in the currently valid criminal code, *S.M. Gregorii XVI*, commonly known as the *Regolamento organico*, article 610. A portion of the proceedings was referred to the President of the tribunal, who in turn consulted with his superior, to determine whether, given the circumstances, it was permissible to proceed further, or rather, whether the proceedings should be remanded to the ecclesiastical court. After all matters were subjected to careful examination, and since no reasonable suspicion arose from the testimonies of the witnesses against the aforementioned parish priest, and since the accusations against him were based solely on the unreliable and contradictory statements of the accused and other witnesses, the President of the tribunal, after consulting with his

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superior, decided to remand the entire case to the ecclesiastical court.

[*Latin ed. p. 428*]

£28 ON IMMUNITY. It seemed that a rock was about to be born, when, after this matter had been brought to the attention of the Most Holy, the order was given by the highest official of the tribunals to the judge to proceed with a criminal trial. After the trial was completed, and the case was discussed in the criminal court, a sentence of death was pronounced against Titus and Gaius. However, an appeal was made against the sentence, and the defender of the accused strongly insisted on the nullity of all the proceedings, alleging that ecclesiastical immunity had been violated. Therefore, the matter, concerning such an article, was brought before the Holy Congregation of Immunity, and a serious dispute arose between the highest official of the civil tribunals and the defender of the accused.

A summary of the arguments.

THOSE WHO ARGUED IN FAVOR OF THE VALIDITY OF THE PROCEEDINGS:

— It was said that the criminal judge had acted correctly in conducting the trial, because, having excluded any suspicion against the parish priest, he had not proceeded against him.

— Furthermore, it was known that the clerk was obliged to write down everything that the examined witnesses stated before the judge.

— In the present case, some witnesses named the parish priest as if he were guilty of the same crime, but the lay judge, although he admitted the depositions, did not proceed against the cleric.

— Moreover, a decree on this matter had been issued by the Roman Pontiff.

— At least part of Article 610 of the *Regolamento organico* was observed, in which it is stated that, in such cases, the judge who initiates the trial, after the examination, must report the deposition against the cleric to the president of the tribunal, who will inform the ecclesiastical judge.

— It was argued that, if the ecclesiastical judge was not informed, it did not necessarily follow that the trial was null; for, since there was no trial against the cleric, and the code made no mention of any nullity, it did not seem that the trial could be declared null on this simple defect.

— Furthermore, it could not be said that the ecclesiastical judge had not been informed, when the matter had been presented to the Supreme Pontiff himself.

— Nor was it possible to adduce the provision that is read in chapter "Si

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Iudex laicus de Sent. Excom." in 6, which states:

[*Latin ed. p. 429*]

IMMUNITY. 429 «(Pending discussion regarding the article on ecclesiastical immunity, the exercise of secular jurisdiction is suspended.» For the Judge did not arrogate to himself the power to pronounce judgment concerning Clairac; rather, the contrary is the case: therefore, he should not have suspended the exercise of secular jurisdiction. And since the Defender of the accused seemed to raise some doubt regarding the Rescript obtained from the Roman Pontiff, the Supreme Moderator of the tribunals responded with these words: «It must be presumed that the orders issued by him (the Moderator) originate from the Most Holy Prince himself, and that his supreme Oracle was consulted. Indeed, it is entirely improper and impudent to investigate by what law, by what authority he commands, but whoever receives his commands is bound to venerate them and to fulfill them without hesitation, as the Supreme Signature of Justice declared in a certain famous cause of the Lauretana Vicariate on June 16, 1834, § 4, before the Most Reverend Falzacappa, Prefect. But it is not necessary to cling to presumptions, when the authentic document of the Rescript is preserved.»

WHAT THE DEFENDER OF THE ACCUSED DISPUTED. — The Defender, in his second argument, after mentioning article 610 of title 2 of the criminal code, concerning Immunity, of which we have already spoken, and in which it is stated: «If anyone names a witness or any person inquired about, during the course of the examination, a person belonging to the Church, with regard to the matter or as an accomplice in the crime, the Judge who orders the process will complete the examination... and upon completion of the examination, he will submit the matter to the President of the tribunal before which the judgment is pending, and he will also notify the ecclesiastical tribunal.» The Defender stated that the ecclesiastical tribunal had not been notified; rather, the President of the tribunal, having received the testimonies by which the parish priest was implicated in the crime, had proceeded with the judgment: declaring the parish priest to be not at all implicated in the crime, unless perhaps other witnesses were examined who would bring the matter to light. «In which case, the ecclesiastical tribunal should be notified, and in the meantime, the process should proceed.» But this interlocutory decree, the Defender argued, the lay Judge could not issue, since the cited article would be openly violated, and the sacred canons would be presumed to be violated, which absolutely prohibit laypersons from pronouncing judgment concerning ecclesiastical persons.

[*Latin ed. p. 430*]

430. OF IMMUNITY. It is added that, by this decree, the judge was considered to have placed himself in a position to examine, through the testi-

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mony of others, whether the parish priest was guilty of the crime or innocent: which is nothing other than to place oneself as a judge over an ecclesiastical person. It was not an obstacle that it was said, on the contrary, that the process was not actually against an ecclesiastical person. For the judge, who conducts the process, seeks only to reveal the truth through the testimonies of witnesses or documents, and it is of no concern to the judge whether Livius or Sempronius is found guilty or innocent. Therefore, it is not correct to say that the process is against Livius, or that the process is in favor of Livius. For the judge's intention in conducting the process is entirely indifferent. Favor or condemnation arises spontaneously, not from the judge's intention, but from the testimonies of the witnesses. Therefore, if the parish priest was not found guilty, the judge was not excused in his manner of acting in conducting the process. And if there were any difficulty regarding the understanding of the law, it is a known principle: in doubt concerning an article of the law regarding immunity, it must be pronounced in favor of immunity. *Pigliateli, t. 9 cons 9 §. 14.* Regarding the rescript of the Roman Pontiff, by which a lay judge was given the power to conduct a process concerning immunity, the Defender made several observations, among which he stated that this rescript had not been communicated to the accused, and that it had become known only after a year. Furthermore, the Defender maintained that, in this matter, which is entirely ecclesiastical, no place could be given to the presumption of which I spoke above. For the supreme moderators of secular causes are indeed presumed to render judgment in their own affairs with the approval of the Prince; but in matters of immunity, the Holy Congregation of this name is present, which has exclusive jurisdiction over this matter, and through which such powers are granted by the Roman Pontiff. Finally, the Defender observed that the rescript was obtained from the Roman Pontiff after the interlocutory decree had been issued, and therefore after the immunity had been violated.

Doubts:

I. "Has the ecclesiastical immunity been violated in the conduct of the secular tribunal's process (N.) in this case?" And to the extent that it is affirmative.

II. "Are the acts that followed the violation null in this case?"

[*Latin ed. p. 431*]

IMMUNITY. 431 "And concerning the affirmative. III. "Whether and how provision should be made in this case." RESOLUTION — The Sacred Congregation of Immunity, on February 28, 1837, issued a resolution, and again addressed the disputed matter on May 29, 1838: Regarding I and II, negatively. Regarding III, provision has been made in the foregoing. FROM THE CANONICAL COLLECTIONS: I. In criminal cases, in which a certain cleric may be implicated, the lay judge, according to the sacred canons,

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cannot proceed to render judgment against him. II. Nor can he proceed in the institution of a process, whenever witnesses testify that the cleric was involved in the crime, unless the proper safeguards are observed. III. For a process, which, by its jurisdiction and the manner in which it is conducted, makes public the truth, is in a certain sense related to a judicial sentence, just as matter is related to form. IV. Therefore, he who is not authorized by jurisdiction to render a sentence against a cleric, neither has the right to prepare the material, nor to perform the judicial acts, which directly and immediately refer to that person and the sentence. V. In the present case, however, immunity was not violated in the institution of the process, because of a rescript from the Roman Pontiff, which, after considering the acts of the initiated process, granted the judge the power to proceed.

[*Latin ed. p. 432*]

432 from the INDEX of Prohibited Books. I. DECREE. Tuesday, the 17th of December, 1866. The Sacred Congregation of the Most Eminent Cardinals, established by the Apostolic See for the purpose of examining books and determining whether they should be placed on the Index for prohibition, expurgation, or permission, having considered the matter, and having been consulted by the Most Reverend DOMINOS of the delegation, and having condemned, prohibited, and ordered that the following works be referred to the Holy PIO doctrine, and that all condemned works be banished from the Palatine Library of the Holy Apostolic Roman Republic of the Vatican, and that the following works be condemned and prohibited:

* *Duecento anni dopo, ossia il secolo decimo nono giudicalo dalla posterità,* by Eugenio de la Bruyére. Florence, 1866. (This work is subject to the second rule of the Index.)

* *Le Confesseur* by the Abbé [illegible]. Author of *Le Maudit*. Brussels, 1866.

* *La révolution,* by Edgard Quinet. Paris, 1866.

* *Defesa do Racionalismo ou análise da Fé,* by Pedro Amorift. Vianna, Porto, 1866.

* *Estudios sobre o Casamento, em ocasião do opuscolo do S. R. Visconde de Seabra sobre este assunto,* by A. Herculano. Lisbon, 1866.

* *Saggio di preghiere per la Chiesa cattolica italiana,* compiled by the "Società nazionale emancipatrice e di mutuo soccorso del sacerdozio italiano." Naples, "Stabilimento tipografico Perotti," street "Mezzocannone" number *104, 1866.

Decree of the Holy Office, Tuesday, the 29th of August, 1866. IV.

[*Latin ed. p. 433*]

433 DECREE. Therefore, no one of any rank, wherever located, shall read, retain, or publish books that have been declared forbidden by the

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Inquisitors, or those that have been condemned by the Most Holy Office. This began with the decrees issued by the Most Holy Office. Given in Rome on the 21st of [month], but the aforementioned [decree] shall be observed by the Ordinary of the place, and the SANCTITAS [His Holiness] shall, in his own language, transmit to them the condition of the books, and whatever else has been reported to the LORD, and which the POPE has approved, condemning them and forbidding their publication, and the following Index of heretical books, S. I.C. [Sacra Congregatio Inquisitionis], and shall be promulgated, etc. December 1866. ANTONINUS Cardinal DE LUCA, Prefect. In the place of the Seal, FR. ANGELUS VINCENTIUS MODENA, Ordinary of the Sacred Congregation of the Index. On the 22nd of December, 1866, in the Sacred Office, before me, Aloysius, at Santa Maria sopra Minerva, the aforementioned Innocentian Decree was affixed to the Basilica of the Prince of the Apostles, in the Palace, in the customary places, and was published in the City. Philippus Ossani, Major Curator. Acts, volume II, page XI, number 8.

[*Latin ed. p. 434*]

434 APPENDIX XII. EXPOSITION AND RESOLUTION OF THE CAUSES WHICH HAVE BEEN SUBMITTED AS A STANDARD TO THE ECCLESIASTICAL JUDGE FOR RULING ON THE MATTER OF MARRIAGE WHICH WE PRESENTED ABOVE. "The Gratianopolitan 'marriage'—a matter of great offense and scandal to the Vicarius General of Gratianopolis, and to the Bishop, both of them." Finally, the matter began to grow from a single month, and the Sacred Order urges that this question be defined, "clearly demonstrating, and as has been announced, matters of the highest importance." "Sempronius (so the Vicarius says) and both declare that they are truly joined in marriage." "A noble man of this city," they say, "Sempronius, desires to marry Bertha, a girl from a family of far inferior standing, and even, according to canon law and the custom of Gaul, he desired to contract marriage with her four years ago, when she was still a minor, which marriage would be invalid and null, and therefore, since the consent of the family was necessary, to which he was opposed and resisted, and which he could not obtain, he secretly, without the knowledge of all, went to London, in Angliam, and after a stay of eight or ten days, on September 29th of the year 1836, before the Missionary Apostolic, in a certain chapel, before the parish priest of the domicile, a Catholic marriage was celebrated; it was not, indeed, begun before the Reverend Council of Trent, nor did it begin before the parish priest as quasi-domicile, as the laws require, but only before the parish priest of a very short residence, and in good faith, believing that he was truly and lawfully married, he cohabited with Bertha, and from that union, several children were born. But since the marriage in London was celebrated by the Missionary Apostolic, or by the parish priest himself, without the

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knowledge of all, is it valid and lawful? It is questioned whether so short a residence was sufficient, so that Sempronius, before the Missionary Apostolic, or before the parish priest, could have validly and lawfully contracted marriage. Suspicion...

[*Latin ed. p. 435*]

4)5 JÉPPEN1 x xii. "Concerning a missionary apostolic mandate granted to the Bishop of Brixiae by the Holy See, in response to a letter written to him regarding the matter: It has been conceded to him, by virtue of which, the faculty to assist in marriages, as a parish priest, before the faithful; it is easily understood that marriages contracted without the Church's impediment have no canonical validity, and that no dispensation has been requested or obtained from the Bishop. Therefore, it must be determined whether, and in what manner, such a bond, with whatever diminutions, has been declared unbreakable by secular authority, and whether the Church can, in this case, validly ratify such a contract, so that, in the future, it may be easily understood that nothing is done in this matter without consultation, and without approval, and that it is not validly enacted. Nor does it seem that the consent of the family can be applied." "These are the words of the General Vicar." "Indeed, regarding the consent of parents," he says, "it is immediately necessary to inquire whether the missionary apostolic officials of London were granted, by the Most Christian King Henry III, through an edict promulgated in Blois in the year 1579, article 40, and renewed by Louis XIII in the years 1629 and 1639, the faculty to bless marriages of Catholics, so that they are not subject to any restriction based on domicile, or quasi-domicile. It is clear that these are not subject to the aforementioned restriction, as confirmed by the Congregation of Propaganda Fide, with the unanimous consent of the Secretary and Officials. Indeed, it is the opinion of this Congregation that marriages contracted without the consent of the parents are entirely invalid and must be declared as such, whether they are of the same name or not. It is not necessary to discuss the Gallican laws regarding impediments, as explained in the *Rerum et Dec.* of the French Clergy, Volume III, and as discussed by Benedict XIV in the instruction transmitted by the Sacred Congregation in 1804 regarding this matter. This is well known to Gratian,"—"The Sacred Congregation, in its Synod, book 9, chapter 11, section 5, cites several authorities."

[*Latin ed. p. 436*]

436 APPENDIX XII. The very Curia itself, which places the reason for doubt, "Secondly, if those mentioned above, who are entirely of one mind and are not legally married, but merely wish to be joined together, transfer their domicile, whether they are men or women, without a priest, because there was no intention of contracting marriage, they change their

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residence, not before a priest of their domicile, nor before a priest of their quasi-domicile, but only before a priest of their habitation, and this is done in the shortest possible time, not with male and female witnesses."

"Indeed, although they contract marriage without a priest and without witnesses, this is followed by many authors of great renown in their work on marriage, as the Congregation stated in response on September 5th, in Cardinal Lib. 3, disput. 17 and following, especially 1526, under number 29, defending the validity of marriage. To the first question, it responded that it is not lawful for those who are transferring their domicile to contract marriage in a place where the Council of Trent has not been promulgated, even if the person contracting the marriage has a domicile in a place where the Council of Trent has been promulgated, and has departed from that place due to difficulties. This marriage would be valid. However, such resolutions have been confirmed by His Holiness Urban VIII in his brief of the year 1627, sent to the representatives of the same Archdiocese. And the brief also confirmed the opinion of the renowned Doctors and Theologians; the aforementioned XIV, in his letters dated March 19, 1758, to Anthony, Archbishop of Goanum. To him, three propositions were presented by the Archbishop-Elector of Cologne.

"It is asked by the Holy Congregation whether men and women of a certain place, who are passing through that place, can contract marriage in a place where the Council of Trent has been promulgated, in the context of the definition 'Huius vero bene exposita definitionis perpenso, facile ligitur matrimonia loco Pontifex primo, irrita, et ac nulla ab eo quia autem cen- eadem Congregatione decerni, fraus intercessit, validum intelsecundo in quo dictum. Concilium non est pro- seri matrimonium tertio loco positum mulgatum, in quo licet fraus intercesserit, lium, retinentes idem domici- valide possint in isto loco ma- trimonium contrahere. sine Parocho, ei testibus minus is, qui matrimonium, antequam illud iniret, x nihilo- contrahit, domicilium, seu quasi domicilium, adeptus erat in loco,

[*Latin ed. p. 437*]

APPENDIX. And below, the same Pontiff, from "De Sacramento Matrimonii," chapter 2, article 2, where the matter of domicile has its origin. It is observed that, according to the common opinion received, observed, and regulated today, number 487, section 12, there is no impediment, and that nothing is morally reprehensible, if the contracting parties celebrate the marriage in the parish of the place where one of them is domiciled, provided that, before entering into the marriage, both have been known to reside there. It could be doubted whether one who, before being joined in marriage, had acquired a quasi-domicile in another place, truly considered himself to be domiciled there, and whether, for the purpose of the marriage, a certain period of time preceding the celebration would not be required. The authors have discussed this question, as is evident from question XIV

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in the "Enunciatae Litterae ad Novum Archiepiscopum Goanum" (in this matter, nothing can be answered other than that, before the marriage, the contracting party must have resided in the place where he claims to have domicile, for at least a period of one month). It has been asked whether this domicile, acquired as if it were a temporary residence, should be considered a true domicile, and whether the prescription of the Council concerning this matter applies. The Congregation, convened by Fagnanum, before a definitive decision on this matter, wished to know what should be decided. — "In these matters of law, the following will be observed in Fagnanum, chapter [omitted], where it is stated concerning the Parishes, and in similar cases it can easily be applied. In the celebration of the Sacrament of Marriage, unless there is a contrary circumstance, it is required that the domicile, as we have said, not only be acquired for a certain time, but that the contracting parties have actually resided in that place, and that they may have resided there even after the marriage."

Alice now raises a question of dogma, concerning the Congregation. "Those who fear and those who are concerned are to consider the following two points seriously. First, that neither party to the marriage should appear to be from a different place, when they celebrate their marriage. For example, if a man and woman, who have been living together for some time, celebrate their marriage in Aquisgrana before the Apostolic Missionary, the Sacred Congregation, but only the family of one of them is present, it does not seem to express the true intention of initiating the marriage. Second, that more than one person who resided in Aquisgrana for at least one month, have made known the validity of the marriage; that those who have received the marriage have declared that the children born of this marriage are legitimate. As far as the value of this marriage is concerned, some have considered it necessary to doubt."

[*Latin ed. p. 438*]

Fathers, consider for your own XII. [chapters]. RESOLUTION: With prudence, determine whether the opinion of the episcopal court of Gratianopolis concerning the matter to be presented should be given, at least regarding the essential aspects of the process demanded in the declaration of the Most Holy Benedict XIV, or rather, whether, considering the validity of the process concerning the marriage of the aforementioned parties, and having examined the subject matter, it is possible, before the Bishop of Gratianopolis, or an ecclesiastical person appointed by him, and before the witnesses of the marriage, to grant, with the substantial clemency of the Holy See, especially considering the circumstances, and with the intention of healing the asserted impediment of the betrothed, not only in London, but also in that Apostolic See, to the extent that the marriage has been renewed, and especially concerning the consent of the man, having considered the family situation, it is necessary to consult also for the Most Holy See, according to

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form, on all matters. » And concerning the DUBIOUS matter: How should one respond in the case of a more expeditious confirmation, for the sake of the Vicariate; in secret, concerning the fear of scandal, especially to the extent that the consent is renewed, and whether, according to the Constitution, it is prudent to proceed, having preserved the confidence of those involved; whether it is necessary to have the form of Benediction; whether, according to the necessary words, it can be said that it is sufficient to heal the impediment at the root.

On April 3, 1841. (i) You will see what we have noted concerning the manner of establishing domicile in the case of Marriage, as related in Volume I, page 135.

[*Latin ed. p. 439*]

APPENDIX XIII. DECREE CONCERNING THE METHOD TO BE OBSERVED IN CASES HANDLED BEFORE THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS, IN ACCORDANCE WITH THE ORDER OF JURISDICTION.

"In the general meeting of September, in the year 1834, it was decided that, if a question or other doubt arises with the agreement of the parties; otherwise, the Most Reverend Fathers ordered that the old method of the Holy Congregation for handling affairs, concerning either matters of its own competence or those in which there is disagreement between the parties, should be strictly observed in the future. This method is as follows:

5. The parties shall exercise their rights through memorials presented to the Holy Congregation.

6. If the cited party does not appear within the prescribed time, it shall be cited a second time to agree on the doubt, and also to appear before the Congregation.

7. Whenever in matters that are brought before the Holy Congregation of Bishops, or its Auditor, a doubt arises, whether from the reports of Ordinaries and Regular Canons, or from the arguments of the parties, the Holy Congregation shall proceed to resolve the doubt; and the decree against the cited party shall be notified by the Cursator.

8. The original documents, by which each party supports its case, shall be transmitted to both parties, fifteen days before the day of the presentation of the case, through a notification sent by the Secretary of the Holy Congregations.

9. The allegations of each party shall be presented ten days before the Congregation.

10. If the party agrees and presents its rights before the Most Eminent Relator, who shall examine them and report, the Relator shall, for the purpose of expediting the matter, grant the party a period of at least thirty days to present its evidence.

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11. Therefore, the more diligent party shall summon the other party before the same Relator to agree on the doubt, and to have it written down, and that it shall be included in the citation, as is written below.

12. The Most Eminent Relator, or his Auditor, or the person who presents the matter, shall transmit the allegations and summaries to the same Auditor of the Most Eminent Relator.

13. The responses shall be presented three days before.

[*Latin ed. p. 440*]

440 APPENDIX XIII. The propositions of the cause are distributed; if it is granted, then permission to return [to the process] and to communicate [with the Congregation] is given, as is assigned, unless the preceding article [states otherwise].

11. "The resolution of the Most Eminent Congregation is written by the Secretary and signed with his name, and is delivered to the part assigned to signify the resolution."

12. "If, within ten days, the defeated party requests to be heard again, the Most Eminent Relator can grant the benefit of a new hearing."

13. "Whenever the matter has been decided with all votes, or with a difference of only one vote, and not otherwise, the decision is delivered to him who obtained the cause."

14. "The victor appears before the Most Holy Fathers, who, as a mere executor, decrees the execution of the resolution of the Holy Congregation."

"CHARLES Cardinal ODESCALCHT, Prefect. of the Holy Eparchy of Ephesus, Secretary."

[*Latin ed. p. 441*]

as from the MINUTES OF THE CONSISTORY. ADDRESS which the Most Holy Pope Pius IX gave on the twenty-second of February, in the Secret Consistory of the year 1867. The promotions within the Consistory, and other matters which were transacted and made of public law in this Consistory, we shall more suitably recount in the following volume; meanwhile, we present the Address which the Most Holy Father gave on this occasion, the content of which is as follows: Venerable Brothers. "Since the charity of Christ urged Us to seek out a means by which We might consider the situation of so many dioceses in Italy; in the month of March of the year 1865, We sent a letter with Our own hand to the Most Excellent King Victor Emmanuel, requesting that he send someone to Us, with whom We might discuss this very serious matter. And since He had complied with Our wishes, discussions were indeed begun; but, through no fault of Ours, they lacked results, and Our desire was frustrated, We who were moved by a fervent zeal to promote the salvation of souls, which this Holy See has always deservedly placed above all other things. The matter has

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indeed been resumed recently, with the good will of those who hold power in Italy; but, Venerable Brothers, We are not able to speak of this subject without great sadness and acute pain. For the Holy Priests, whom We are sending to vacant Sees, will not only find the episcopal revenue of each diocese diminished, and whatever was accustomed to be used for their own support and sustenance taken away from them; but, what is worse, they will find the stones of the sanctuary scattered, the refuges of religious perfection deserted, the inhabitants of the monasteries deprived of all means of support, and sacred virgins led away "from the mouth of the cave, where, with God's help, they had found refuge and sustenance." *Acta, vol. U, p. 29.*

[*Latin ed. p. 442*]

44 2 ADDRESS. The dying [soul] in the kiss of the Heavenly Bridegroom. It is certainly grave and ungrateful to assign Bishops to such Sees, especially in the present distress of public affairs. But what of that? Shall we therefore withdraw from our purpose? By no means: let the laborers go forth to the vineyard planted by God, and let them water it with the blood of His Son; let them cultivate it in the name of Jesus Christ, hoping above all for His help; let them approach it, confident in the patronage of the Virgin Mary, who will be able to help them most powerfully. For while this See is a seat of wisdom to replenish the storehouses of understanding, it will also, as a refuge for sinners, easily bring many of the wandering back to it; as a comforter of the afflicted, it will alleviate the sorrows of many of the wretched through them; as an aid to Christians, it will stir up filial devotion and the piety of many; and in it, they will find relief from the heaviness of their most serious duty, and solace in diligently striving against the enemies of God and the powers of darkness, who seek to seize the entire evangelical field, and will bring about a lamentable devastation in it. Therefore, among the new Pastors, we shall, for the time being, relinquish a few who belong to Italy; trusting that in future Consistories, it will be permissible to relinquish others again and again, if, alas, the judgments of men, living according to the standards of this age, can agree with ours, especially with regard to the selection of persons. It does not concern us to say more about the present state of affairs; but the future, unless a change of the Most High intervenes, is clearly foretold by the already very sad series of events. However, we must confess to God, who, as He has done until now, with the help of the Immaculate Virgin and the holy Apostles, has so clearly protected us under the shadow of His wings; so, too, we hope, He will convert our mourning into joy. We strive, Venerable Brothers, to urge and hasten this most desirable outcome through our prayers, through the harmony of our

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spirits, and through the exercise of all the virtues of Christians.

[*Latin ed. p. 443*]

443 FROM THE SACRED CONGREGATION OF THE COUNCIL REGARDING THE ORDINATION OF THE SUBDIACONATE AND A DISPENSATION. July 28, 1866. Session 23, chapters 5 and 13, were cited. Livius, born to poor parents, was orphaned by the early death of his father. His uncle, who was quite wealthy, took charge of raising the six children of his deceased brother; but he expelled three of them from the house because they were steeped in bad habits. The other two, however, one of whom was Livius, are said to have been compelled to enter the ecclesiastical state, so that the third nephew, who was the son of the deceased brother by his first wife, might inherit all of his uncle's property. Livius, as a young man, entered the Seminary, but he never completed a full scholastic year there, because he returned home for several months each year for reasons of health. As the time for ordination approached, he duly received the minor orders and the subdiaconate. The question is whether he accepted the subdiaconate willingly, or whether he was compelled to do so, in which case he might be considered to have received it invalidly, or at least to deserve the indulgence of an Apostolic dispensation due to the coercion that was imposed upon him. Since Livius had petitioned the Sacred Congregation of the Council regarding this matter after the death of his uncle, a response was requested from the Bishop for information and a vote, so that he might report on the upcoming ordination of the aforementioned Livius. After receiving information and a vote from the Bishop, another response was issued, stating that the matter should be handled according to its proper course before the Curia, and to the extent that it is legally permissible, with due regard for the rights of the Bishop. Therefore, a process was completed in the episcopal Curia, taking into account the Constitution of Benedict XIV, which begins: "Si datam...", and finally, a judgment was issued, which concluded with these words: "The ordination to the subdiaconate received by Livius is declared null."

[*Latin ed. p. 444*]

iii. OF OBSTACLES TO ORDINATION AND DISPENSATION. "Already, because of a lack of will from within, and moral coercion from without." The cause, having been referred by the Defender of the Holy Order to the Sacred Congregation, a decree was issued, which was recorded in the file, citing the Defender regarding the validity of the Order: and thus the cause began to be examined so that it might be defined in the Holy Congregation. Briefly, I will mention what is reported from the procedural acts that were brought to bear upon Livius, and the fear that was instilled in him. Several witnesses were present who testified under oath that Livius had clearly demonstrated a perpetual opposition

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to the ecclesiastical state in many ways, and that he had shown the same unwillingness before receiving the minor Orders, and the Subdiaconate. Thus, one witness, speaking of the minor Orders, said: "Livius told me several times that he was invited to receive the tonsure, and that he was proceeding against his will, as also with the two first [Orders], and the other minor Orders." I myself, as much as I could, tried to correct some of the errors in his teaching, which are usually explained in the examination; and so that he might not offend by his perpetual hatred, and so that he might not live a mendicant life outside the house, I reminded him of the treatise on human actions... It happened that, after a few questions, he was approved, which caused him great sorrow. Then, weeping, he expressed his wishes that God would change the will of his father, for he had in his mouth: "either a priest, or a soldier and a farmer." Another witness affirmed: "Before Livius approached the city of N. to begin the Order of the Subdiaconate, he told me: I am proceeding to receive the Order, but without my will." Another witness testified: "Before Livius set out for the city of N. to receive the Subdiaconate, he asked me to speak to his father so that he would abandon the idea of forcing him to receive the Order. I did so, but his father replied to me: I am certain that Livius does not want to become a priest; nevertheless, I want him to become a priest, because you do not know that I am determined that only one of my nephews should remain secular, so that my inheritance may remain undivided." In the selection of soldiers, as you know, it happened by lot that he was conscripted among the soldiers, and therefore, if he does not receive the Order, he must serve in the military. Therefore, he was told that my firm will was that he should become a priest: and if he did not want to, he should cease receiving stipends, but in such a way that he would no longer be considered by me.

[*Latin ed. p. 445*]

OF THE SUBDIACONATE ORDER AND THE DISPENSATION. Other witnesses repeated the same thing, namely that the father had been in Fermo with the firm intention of constantly urging his nephew to either the priesthood or military service, but in such a way that, if he became a soldier, he would be considered permanently banished from the home; and that he had steadfastly persisted in this intention until the hour when Livius was about to leave the city N. to begin the Order of Subdiaconate. When Livius was questioned by the Judge: what intention he had for going to the city N., whether to be promoted to the Order of Subdiaconate by that Bishop, or not? He replied: "Indeed, with that intention I went to the city N., so that I might convince myself that the Bishop had questioned me about my ecclesiastical vocation, and that I would pray him to intercede for me with my father, and to avert the unsuitable plan that he had in mind, hoping in this way that the Ordination would not take place. But things did

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not proceed according to my opinion; for when I arrived in the city N. the day before the Ordination, I presented myself to the Bishop, who, before many people, received me and, addressing only me with these words: "Are you Livius N. N.?" immediately dismissed me, adding: "And tomorrow I will see you in the temple." I, disheartened, approached the Ordination as if to a machine; my firm intention remaining, that I would not allow myself to be bound by a vow, nor would I validly receive the Subdiaconate. After Livius's ordination, the death of another nephew occurred, whom the father had designated as his heir; and the witnesses were unanimous in affirming that the father was very sorry for what he had done in making Livius a Subdeacon, saying that if he had known, he would never have allowed Livius to be ordained as a Subdeacon; and furthermore, he had considered a way in which Livius could be released from the bond of having received the Order.

DEFENSE OF LIVIUS. — In the defense of his cause, Livius appointed a lawyer in the City (1), who, after a detailed account of the events, first of all argued that Livius had been promoted to the Order of Subdiaconate through fear, and was therefore not bound by the obligations of that Order. (1) The cause of Livius was presented by Salvator Pallottini, Advocate.

[*Latin ed. p. 446*]

446 CONCERNING THE SUBDIACONATE ORDER AND THE DISPENSATION. To demonstrate the connection between these propositions, he expounded extensively on the doctrine received in the tribunals, according to which absolute coercion is distinguished from coercion which is termed conditional or causative; and that the nature of absolute coercion is to render the act of Ordination invalid; whereas, causative coercion does not invalidate the Ordination; but the question had previously been raised, whether one so coerced would be bound by the obligations connected with Holy Orders; although the Doctors had differed on this question, some saying that one is not bound by the very fact, while others said that only a place is made for an Apostolic dispensation; nevertheless, the first opinion prevailed, which teaches that one ordained by causative coercion is, by the very fact, not bound to the obligations of Holy Orders. Having expounded this doctrine and fortified it with various decisions, the Defender did not contend that this concerned absolute coercion, but rather that it concerned conditional and causative coercion, arising from fear of falling into a state of eternal damnation; and therefore, he maintained that the entire question was reduced to a question of fact, namely, whether such coercion had occurred in the present case. However, from the testimonies of the witnesses, it was clear that Livius had never experienced a divine vocation to ecclesiastical life; indeed, he had consistently shown a contrary will; he had never applied himself to sacred studies, and had made no progress in them; he had approached the reception of Holy Orders for no other reason

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than through coercion exerted by his father with firm and valid words: either become a priest, or a soldier, and leave the house; and Livius had not been helped by fervent prayers, nor by tears, nor by suitable mediators sent to his father to dissuade him from his constant and unreasonable purpose; and on the very day that Livius departed to go to the city of N., he spared no effort to sway his father's mind, and nevertheless, he was compelled to leave in order to receive Holy Orders. The Defender added that all these things occurred in a young man who was poor, whose father had been orphaned from infancy, and whose widowed mother, like Livius himself, abhorred secular military service, which neither the father nor the mother offered to Livius with equal choice, either as a priest or as a soldier; for if he became a soldier, he would no longer receive Livius at home.

[*Latin ed. p. 447*]

ORDINATION OF THE SUBDIACONATE AND THE DISPENSATION. 447 Livius could not have appealed to his own Bishop, who was then outside his diocese, nor could he have appealed to another Bishop regarding the ordination, according to what Livius himself ingenuously confessed under oath. However, the Defender maintained that all of this was sufficient to establish that fear, which is said to cause a fall, in a steadfast man. And to support this, he cited what Saint Rota stated in a certain case from Leodium concerning the nullity of the Subdiaconate on January 10, 1689, before Emerix the younger, in which it is written: "In this case," such fear was considered sufficiently proven from the testimony of Ioannis, who, recounting the entire series of□events, stated that he had come to the villa where Petrus was staying at the request of his parents, and that he had been threatened with their indignation and the loss of his inheritance, or the deprivation of his paternal goods, unless it was shown that the Subdiaconate would be conferred upon him, and that this very threat was repeated to him on the same day after the ordination, namely, that with all the necessary preparations for the conferral of the order, he was still very hesitant. Such threats of parental indignation and the loss of a greater share of goods are suitable to instill fear, even in a steadfast man, as is stated in chapter i concerning those things that are much stronger. Furthermore, Livius, at the time of his ordination, was a minor, whose judgment, as the jurist Ulpianus states in L. i ff. de Minor, is fragile and infirm, and easily swayed. Moreover, in this case, it was added that Livius did not want to perform the duties of the Subdiaconate, although this was the very cause of his parents' indignation. After this, when the Defender was about to present another argument, he pointed out that, even if we assume the facts, it does not necessarily follow that the obligations are null, but that there is room for an Apostolic Dispensation. For Livius, bound by the sacred bond of the order with virtuous morals, could easily fall into vice, to the scandal of the faithful and the disgrace of the ecclesiastical order; for from the very

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beginning, when he had prayed to God to change his parents' intentions, he had not understood that word which not all grasp: that it concerned burdens which, according to the law of the Church, are attached to the Subdiaconate! and that it concerned an order which, in ancient times, was not considered among the higher orders.

[*Latin ed. p. 448*]

448 CONCERNING THE ORDER OF SUBDEACONSHIP AND THE DISPENSATION. The Advocate presented numerous examples to the Most Reverend Fathers, which had been brought before the Holy Congregation and on which a judgment had been rendered granting a dispensation in similar cases. WHAT WAS ARGUED TO THE CONTRARY. — The Advocate for the Order (who is often called upon in such cases because of the similarity they bear to matrimonial and religious profession cases, in which his intervention is entirely prescribed) pointed out that Livius had entered the Orders, both the minor and the subdiaconate, after prayers which he himself had offered, after requests had been made, and after having obtained a dispensation from impediments. After his father had died and he had become heir and therefore wealthy, he had requested a release from the bond of the Holy Order; and, with certain observations regarding the acts of the process, he maintained that the evidence was lacking to conclude that there had been a grave and serious fear, which is necessarily required in order to legally establish the nullity of the obligations undertaken. He stated that such fear existed when these conditions are present: 1°, that the evil feared is truly grave; 2°, that it is present; 3°, that it is unavoidable. He argued that if any of these conditions are lacking, the fear is considered light and is not sufficient to invalidate the act; in the present case, all the coercion was contained in those repeated words: "either a priest, or a soldier"; and those words should be understood rather as exhortations and persuasions, so that Livius might choose the better good; especially since at that time, secular military service was accustomed to contribute to the well-being of the peaceful kingdom of his homeland; therefore, Livius could not have abhorred the practice of military service; nor could any such horror, if it were present, have constituted a grave fear; for there was no harshness, no violence, no penalty to extort consent for the acceptance of the Holy Order. Furthermore, the Advocate continued, the second condition, which had just been proposed, was also lacking: for in the act of Holy Ordination, no one was present who could inspire fear, and no one is considered to fear an absent person, as Pignatellius states in volume 9, consultation 181, number 7; and the father was absent at the time of the Holy Ordination; for having undertaken a long journey, Livius had been completely freed,

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and without any doubt or opposition, he had accepted the Holy Order.

[*Latin ed. p. 449*]

ORDINATION OF THE SUBDIACONATE AND THE DISPENSATION. 449 Finally, he demonstrated that the third condition, which the Defender placed as necessary, was lacking, namely that the feared evil must be unavoidable. He argued that since the threats were expressed by words from the father, whether he was a priest or a soldier, the evil that Livius feared was nothing other than military service, which is neither an evil nor unavoidable. Indeed, Livius could easily have hoped to be freed from military service by a payment made by his father; or he could have sought protection from the Bishop; or he could have fled to foreign nations to avoid military service. Furthermore, if the father had not been willing to consider Livius's needs, he could have sought his own livelihood through his own labor, since the young man was twenty-one years old. Regarding this matter, Pignatellius, in the cited work, no. 24, writes: "If it was possible for him to easily avoid the threats and to be rendered completely safe, then fear is never sufficient for this purpose, unless it is such that those who fear it cannot, by any other means, easily avoid the feared evil," as Sanchez de matr. demonstrates, Z. 4, disp. in. 10...>) Pitonius also agrees, who in the ecclesiastical disputation, 82, no. 15, wrote: "The third condition, which is that the one experiencing fear cannot easily resist it, also fails in the present case, because he was in the city, where he could easily encounter the evil; therefore, he should be held accountable for not seeking out superiors, since, with the recourse to superiors available through whom he could avoid the encounter, fear is never considered grave, as Sanchez, etc., state." Therefore, the Defender concluded that Livius was not compelled to receive the holy orders by moral or, much less, physical force, but rather that he chose the priesthood through his own consideration and election, and that the only reason for withdrawing after the father's death was wealth, by which his condition had been changed. He also added that the fear of disinheritance could not be presented in the present case, because, according to the testimony of witnesses, it followed that Livius would be disinherited, whether he became a priest or not, since the father only intended to accumulate his goods in the other nephew. After these points, he concluded that there was no reason for a dispensation, which could not be the desire of Livius to lead a wife. After these matters have been extensively discussed, the doubts must be resolved. I. "Should the opinion of the ecclesiastical court be confirmed, or rejected, in this case?"

[*Latin ed. p. 450*]

450 CONCERNING THE ORDER OF SUBDEACONSHIP AND DISPENSATION. "And concerning the matter, both negatively with respect to the first part, and affirmatively with respect to the second, namely:

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Whether there is a place for dispensation in this case. " RESOLUTION. — The Most Holy Congregation of the Council, after discussion on July 28, 1866, judged that: Regarding the first point, the opinion should be confirmed. Regarding the second point, it is not expedient. FROM THESE, THE FOLLOWING ARE GATHERED: I. The Sacred Order cannot be declared null due to a defect of intention on the part of the one who received the sacred orders, unless it is shown that the intention of the recipient was, in fact, positively contrary to the act of Ordination. II. Such a positively contrary intention is demonstrated externally through proof of coercion in the act of the Sacred Order conferred, which is called absolute. III. Coercion, which is said to be causative, does not prevent the Sacred Order from being valid; for a coerced will is still a will (1). IV. Provided the validity of the Sacred Order remains, the obligations of the Sacred Subdiaconate, which are contracted by the recipient, are not considered binding, if it is shown that the one being ordained was directly compelled by grave fear and threat to receive the Sacred Order (2). (1) We have spoken of this absolute and causative coercion in another case concerning the Sacred Order, which we presented in the Votum. I. page 330 in addenda. — Absolute coercion would be present, for example, if someone, resisting, were dragged by force or with chains to the act of receiving the Sacred Order. In that case, the act of the Sacred Order would be declared invalid externally. On the contrary, causative coercion is said to occur when someone, unwilling, is compelled by some moral coercion through the infliction or threat of some evil, a coercion which, although it diminishes the will, does not nullify it: for a coerced will is still a will, Leg. 2. If a woman... because of fear. Such a moral coercion can be of a kind that it prevents the one thus ordained from being bound by the vow of continence; or it can be the cause of an Apostolic dispensation; or, as frequently happens, it is not shown to be suitable, either for the first or for the second [reason]. (2) Very rarely have cases occurred in which the Most Holy Congregation of the Council has declared that the petitioner is not bound by the vow of chastity. The Defender Livii, who endeavored to collect all the cases that were relevant to the defense presented, was only able to find two in which those ordained through coercion were declared free from the obligation of observing the vow of chastity without the aid of an Apostolic dispensation. One is Namur, concerning a dispensation, which was proposed several times, debated, and finally resolved on March 10, 1731, with the words: "not to be bound by the vow of continence," and the other...

[*Latin ed. p. 451*]

ORDINATION OF THE SUBDIACONATE AND DISPENSATIONS. 4. IF, in some cases, a sufficiently severe form of probation is lacking, there may be grounds for a dispensation, provided that, after considering all

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circumstances, it appears expedient to the Holy Congregation (1). 6. Furthermore, it should be noted that such cases are akin to those concerning marriage and religious profession; therefore, they should be treated in the ecclesiastical tribunals in a similar manner. In Gratianopolitanus, on July 8, 1762, in the case concerning the question: "Whether there is a place for a dispensation from the vow of continence," the response was: that the vow of continence is null. However, four other cases, presented by the Defender of the Faith, were resolved in favor of granting a dispensation. On the contrary, many resolutions are contained in the treasury of resolutions of the Holy Congregation, in which the petitioners obtained nothing; you may also see another case of this kind, which we mentioned in Votum, I, page 828. (1) In the present case, the Holy Congregation explicitly stated regarding the first question: that the opinion of the court should be upon the matter: "Where is the way where light dwelleth, and where is the place of darkness?" whereas, according to custom, it should have responded negatively to the first part, and affirmatively to the second. The reason for this difference in the response (which, however, in substance, falls within the same meaning) must be explained by the nature of the court's opinion: for this opinion, which contained reasons that it could not uphold, would have deserved confirmation if those reasons were valid; therefore, the Holy Congregation would not have said affirmatively to the first part, because of those reasons, but would have used other words, such as: that one is not bound by the vow of continence, as it responded in Namur, regarding dispensations, and in Gratianopolitanus. For, in external law, the Holy Order is not declared null due to a defect of the will of the recipient, unless it is shown that the recipient was compelled by absolute coercion during the act of the sacred Ordination. And a confession, even if judicial, obtained from Livius, in which he stated that he did not intend to be bound by the vow of continence, and that he did not validly receive the Subdiaconate, cannot have the force of proof in external law.

[*Latin ed. p. 452*]

452. JURISDICTION. On August 12, 1865, and September 22, 1866. Session 25. Regarding the Reform. A summary of the facts. Angela B., from the district of C., on November 17, 1605, shortly before her death, established the following in her will: "She instituted her universal heir... to establish a chapel in the altar of Saint Bernard, located in the church of Saint Peter in the aforementioned district of C., and to grant the right, justly, of nominating and presenting chaplains therein, for an indefinite and perpetual duration..." And this right of patronage and presentation... pertains and should pertain to her house and family of B., residing in the aforementioned district of C., and when this family ceases to exist, it pertains to other B. residing in the City of N. Individuals from the family of B., from the district of C., exercised the right of presenting a chaplain from the time of its

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foundation until the year 1646, in which year John obtained the chaplaincy; and in the year 1691, he relinquished the chaplaincy to the Supreme Pontiff, with the approval of Anthony. In the six years that followed, until the year 1827, the chaplaincies were vacant, and the same were always granted by the Apostolic Chancery without any nomination by the patrons, and without any opposition from them whatsoever; this occurred because the chaplaincy was always subject to the rule of reservation or endowment, that is to say, because it had been relinquished to the Supreme Pontiff, or because the chaplain, dying in the Curia, left the chaplaincy vacant. The last chaplain, named Paul, died outside the Curia in the year 1863. Therefore, after public notices were issued by the Ordinary, several individuals appeared, claiming to be descended from the families of B., both from the district of C. and from the City of N., and therefore contending that the right of presenting a chaplain belonged to them. However, since, at the opportune time, none of them conclusively demonstrated the pertinence of the jurisdiction, the Ordinary presented the matter to the Sacred Chancery, which granted the chaplaincy freely to Peter, without any nomination from any of the claimants.

[*Latin ed. p. 453*]

JURISDICTION. 453 One of these, named Lewis de K., having lost all hope of presenting a candidate for that position, petitioned and obtained from the Supreme Pontiff that, in the meantime, the cause pertaining to jurisdiction be examined by the Sacred Congregation for the future vacancies. Therefore, the Sacred Congregation ordered that both the Ordinary and the Promoter of the Fiscal Court of the Curia be heard in writing, solely regarding the petitions presented. Indeed, after carefully examining the new arguments presented by Lewis, in which, either through the testimonies of parish priests or through notarial instruments, it was shown that Lewis B. rightly descended from a certain Laura, which most certainly belonged to the family de B., of the city N., both opened the way for a favorable judgment for the Orator, which, namely, stated that it was fully established that the jurisdiction favored the Orator, because the Ordinary affirmed that the extinction of the family de B. in the territory C. could not be called into question. Synopsis of the arguments. WHAT WAS PRESENTED IN FAVOR OF THE ORATOR. — Firstly, the Orator maintained that he had not acquired any right against the true patrons of the Apostolic Datary, based on the seven preceding presentations (the last one being added): not indeed by prescription, because when it concerns a hereditary patronage, anyone called to it comes by his own right, and suffers no detriment from the negligence of his predecessors. Piton, *De Contr. Pat. Ali.*, 2nd part, chapter 22. De Luca, *De iur. Patr.*, discourse 35, number 7. Sacred Congregation, Conc., in a preliminary session on August 2, 1862, and this is the common doctrine; nor even by the force of long-standing observance,

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which would presume a hidden and legitimate title, because the fact was that the Apostolic Datary had always offered the chaplaincy in each vacancy, either as reserved or as available. Indeed, it is manifest that the status of the patronage of the benefice is not changed, and that no detriment to the patrons is usually caused by the Datary, as all Doctors teach, especially De Luca, *De iur. patr.*, discourse 5, number 5; Piton, *De Contr. Patr. Alleg.*, 72, number 8; Sacred Rota, Rononien, Parochialis, June 3, 1639, %. Therefore, excluding the Datary, and excluding all asserted patrons from the territory C., since, as the Ordinary testified, the extinction of the family de B. in that town could not be called into question, it could not be, as we said,

[*Latin ed. p. 454*]

454. OF PATRONAGE. The Orator maintained throughout that he wished to demonstrate that the patronage in question, as it descended from the family of B., in the city of N., which was second in importance, belonged entirely to him. He stated, first of all, that the patronage in question was truly and properly a hereditary patronage. For, as Lolterio de Re Ben., *Lib.* i, q. 1, 2, n. 3, teaches, "when the founder wished it to pertain to a gens," or family, either his own or that of another person chosen by him. And indeed, the Authors and the Sacred Roman Rota commonly teach that patronage is judged to belong to a gens based on the family name; and specifically, the Sacred Congregation of Firmana, in a judgment of March 29, 1862, concerning jurisprudence. It is clear that the patronage was established by the foundress, Angela, as is plainly declared in the words: "This patronage pertains to the house and family of B." Since, therefore, the Orator descended from the family of B. through Laura of B., a family called by that name by the foundress, and as could be clearly demonstrated by a genealogical tree through all gradus, it was evident that he should undoubtedly be considered to possess the patronage in question. For otherwise, it could not be said that he belonged to the line of the family called by that name; for the family name, as L. 5 C. de verb. et sign. states, includes not only agnates (descendants through the male line), but also all cognates (descendants through the female line), as the Sacred Congregation declared in the case of the Verulana Canonicatus, on July 8, 1865. Therefore, as long as cognates still exist, the hereditary nature of the patronage of a gens does not cease in the last of the agnates. See Cardinal De Luca, *Discipline*, 22, n. 10, on ecclesiastical law; Piton, *Allegations*, 100, n. 190, on contrary patronage; and the Sacred Congregation in the case of Fubrianen, on patronage, of July 12, 1845. With these premises established, the Orator concluded that there remained no doubt that the existence of his patronage was fully established.

WHAT WOULD BE EXCLUDED FROM THE ARGUMENTS PRESENTED BY THE ORATOR. — Above all, some shadows of doubt were cast upon the asserted fact, namely, that the family, both male and female,

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of B., in the city of C., which was first in importance, had completely disappeared; the same was true of the male line of the family of B. in the city of N., which was second in importance. For since both male and female descendants existed in the year 1741 (in which year the name of B. is no longer found in the parochial records of the city of C.), it seemed incredible that...

[*Latin ed. p. 455*]

JURISDICTION. 455 All had died without issue, although the patrons, otherwise unrefined and ignorant, claimed that this was due to the extreme poverty into which they had fallen. Furthermore, it was observed that many canonists agreed that whenever a testator directly, or in an impersonal manner, as they say, referred to a house or family, adding simply the surname, as had been established in the case before the Sacred Rota in Cingoli on August 25, 1818, then this should be understood as a definitive indication of a line of agnatic descent. Therefore, a line of cognatic descent could be admitted in support, as stated by the Sacred Congregation of Bishops in Fabriano, in *Jura Patronatus*, on July 2, 1845; and therefore, in the absence of a line of agnatic descent, the jurisdiction would cease, and the benefit would become one of free collation, or at least would be converted from a familial right into a hereditary one. In light of these and other observations, on August 12, 1865, a question was proposed in the plenary session of the Sacred Congregation: "Does it appear that there exists a jurisdiction in favor of Ludovicus de B— in this case?" The Fathers replied: "Let the Ministers of the Apostolic Datary be heard."

CONTINUATION OF THE SAME MATTER. — The Ministers of the Apostolic Datary, having been heard according to the mandate of the Sacred Congregation, replied to the Sacred Congregation: "It belongs to the Sacred Congregation to judge the evidence and conjectures upon which the genealogical tree of the Orator is presumed to be based; for if anyone from the families mentioned were still actually existing, it would indeed be surprising if, over a period of 170 years, no one had ever asserted their rights. Although this difficulty seemed to be surmountable, there remained an objection: Ludovicus, according to his own confession, descended from the family de B— through the line of cognates, or, which is the same thing, through the female line; unless, of course, Ludovicus merely bore the surname de B— by chance. In this situation, the Ministers of the Apostolic Datary referred to the doctrine which we mentioned above, according to which, as taught in the Sacred Rota of Rome in Cingoli before Zinanni, and in *De Fideicommissis*, Book 10, on the concurrence of agnatic and cognatic descent, a reference to a family in an impersonal manner, made three times, with the addition of the surname of the house and family, indicates agnatic descent; and therefore, the ultimate person connected with the founder by agnatic descent has the right of jurisdiction by virtue

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of agnatic descent.

[*Latin ed. p. 456*]

456. OF JURISDICTION. According to the accepted theory of Ancharani, hereditary jurisdiction is established in the final instance by vocal possession; and therefore, hereditary jurisdiction, once established, is subject to prescription. Consequently, if Lewis were to claim jurisdiction as a relative, the theory of Ancharani would clearly reject this claim. Moreover, if he were to claim it as an heir, besides having to demonstrate the hereditary quality, the prescription established by Dataria for a period of 170 years would prevent him from regaining any access to that jurisdiction. HOW THE ADVOCATE FOR DATARIA REFUTED THE OBJECTIONS. The Advocate for Dataria vigorously refuted the objections raised by the officials of the Apostolic Dataria; first, he reiterated that the status of the patronal chapel of the benefice had not been altered, nor could it have been altered, by the grants of reservation or endowment previously made, citing the authorities already mentioned in the preceding proposition, and adding new ones in confirmation. Then, he addressed another difficulty, which was of greater importance, namely, that the institution itself originated from Angelmann, and had been included in the jurisdictional constitution. Therefore, he insisted above all on establishing the truth of the genealogical tree presented by him, according to which he, being the second-named of the family, derived his claim through Laura de B., as we have seen above, and was connected to Angelmann by blood; and therefore, he demonstrated that the cognatic relationship of the family, the second-named in the second Seat, descended from that line. After this, he pointed out that in the will of Angelmann, when speaking of the family of B. from the city of N., the second-named, she had not added the pronoun of her own name; therefore, those descendants of any family bearing the surname de B. present there, even if their blood relationship were not proven, would be entitled to enjoy jurisdiction, as is understood in one Canon of Melevita. February 14, 1846. Furthermore, although the Advocate could not prove a blood relationship with Angelmann, this did not mean that he should be excluded from the enjoyment of jurisdiction. But what if, in conclusion, a genealogical tree fully justified this very blood relationship, clearly presented before their eyes?

[*Latin ed. p. 457*]

JURISDICTION. 457 Moreover, he maintained that it was futile to attempt to deprive the Ministers of the Apostolic Chancery of the authority of Cardinal De Luca and the Roman Rota, as if Angela, by calling upon the family of B., had repelled the relatives descended from them. For this doctrine, which may have force in matters of inheritance, is not admitted in the jurisdiction, which is considered a matter indifferent, and in which both

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relatives and non-relatives are admitted, as is stated in a certain cause of the Sacred Congregation of the Holy Office, Nullius Sublacensis. Canonie. April 23, 1852, §. And indeed, there are Doctors who hold that, under the terms "house" and "family," both relatives and non-relatives are included, and that both can participate in the exercise of the jurisdiction: and these Doctors are followed by the Rota in Veliterna, December 14, 1853, before Seraphim. It is, in fact, a well-established and universally accepted principle that non-relatives come to the aid of relatives, and, as they say, succeed to the inheritance, namely, in the case where the relatives are lacking, as is stated by Carol. Ant. De Luca, De hin. Leg. art. 22, n. 7, and by the Roman Rota in many places. Therefore, if no other member of the family is present, the heir should descend to the inheritance, so that the Orator himself, at least, may be admitted to the aid and succession to the right of nomination. Finally, he explained the case in which, when the line of kinship is exhausted, the jurisdiction is extinguished, and non-relatives succeeding to the inheritance can take its place: and he especially showed this to be the case when, in the testator's will, a strict condition of kinship is clearly and explicitly stated, and moreover, women are excluded as a rule, as stated by Card. De Lud. Lib. 10, De concur. Agnat. et Cognat. "With these observations, the purpose is again to resolve the doubt. 'Does a jurisdiction exist in favor of Ludovici of B. in this case?'"

RESOLUTION. — The Fathers replied on September 22, 1866: affirmatively. FROM THIS, IT IS UNDERSTOOD: I. The jurisdiction of a family is said to exist when the founder reserved it in favor of the descendants of a certain family or lineage designated by him. Acts, vol. U, fasc. XX.

[*Latin ed. p. 458*]

458. PATRONAGE. II. In the law of patronage, which is hereditary, the negligence of ancestors does not infringe upon the rights of their descendants, and therefore, prescription cannot be asserted against them. III. Grants made by the Apostolic Datary, either by virtue of a vacancy in the curia or by renunciation to the Holy Father, do not cause any detriment to the patrons with regard to the right of patronage. IV. Under the name of "house and family," it is customary to include not only agnates, or descendants through the male line, but also cognates, or descendants through the female line, unless it is shown that the testator expressly or tacitly excluded the cognates. V. When the line of agnates is lacking, it has been determined that the right of patronage descends to the line of cognates, unless the testator has excluded them.

SERVICES OF THE CHOIR. September 22, 1866. Session 24, chapter 12, concerning Reform. Summary of the case. — In a certain town, N., there exists a church which receives any cleric assigned to it for service in the choir, and admits him to the enjoyment of emoluments; therefore, it is considered among the churches that are called "receptive." Furthermore,

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it is customary for this church that all clerics assigned to it must serve the church gratuitously, from the first day of September until the last day of August of the following year, before they are admitted to the enjoyment of the fruits. Anthony, who was assigned to this clergy, was immediately promoted to the sacred order of the priesthood by the Vicar Capitular.

[*Latin ed. p. 459*]

SERVICES OF THE CHOIR. The Reverend Lari requested that he be excused from the free service of the choir, so that he might be considered present in that office without charge, and that this office be understood to last for a year, not beginning on the first of September, but from the day of his Ordination, that is, from the first of April. The Vicar Capitular, unaware of this request made to the clergy, graciously accepted the supplications of the petitioner: for, observing that Anthony had not yet completed the theological curriculum, and that a certain office had been assigned to him by him in the Seminary, he excused him from the service of the church without charge, so that he might be considered present, provided that no special statute, duly established by authority, should hinder him, which would contradict the general laws. Immediately after such a decree was announced to the clergy, they unanimously opposed its execution, adhering to their custom, which had been confirmed by collegiate resolutions even in the year 1795; and therefore, they repeatedly presented their reasons to the Vicar Capitular, as far as was proper, in order that he might revoke the decree. However, since the matter remained unresolved, the clergy brought their complaints to the Holy See. Consequently, in accordance with custom, the question of the services to be observed was proposed under a doubt placed at the bottom. Disputation. The clergy, through their advocate (1), presented their reasons, which can be reduced to the following. The Defender observed that, since the existence of a long-standing custom had been demonstrated, which had also been confirmed by collegiate resolutions, the decree of the Vicar Capitular itself fell under it: for it was subject to the condition that no special statute, duly established by authority, should hinder it, which would contradict the general laws. He asserted that such a statute was present, since legitimate custom has the force of law. Furthermore, he added, it was not necessary to present a statute confirmed by episcopal authority: for it is well known that Chapters can establish laws without the Bishop, which pertain to their own affairs, provided that they do not harm the general order of the church; (1) Hector Apolloni wrote in favor of the clergy.

[*Latin ed. p. 460*]

460 SERVICES OF THE CHOIR. As the Glossa teaches in chapter 2 on the meaning of words, in the 6th word, which reads: "It is commonly said that a Chapter cannot make decrees without a Bishop..." However, if they

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make decisions concerning matters that do not pertain to the Bishop or the status of the Church, but rather to their own particular affairs; for example, if they distribute daily offerings in a certain manner, or if they are summoned to the Chapter in a specific way; for example, by means of a bell, or in another manner; or if, at certain times, even those who are not summoned attend the Chapter, or similar things: it can be said that in these matters, the Chapter's own constitution holds without the Bishop, and these actions are permissible and legitimate. Also, Lotterius in *De re beneficiaria*, book 1, question 14, number 88, Barbosa in *De Canonicis et dignitatibus ecclesiasticis catholicis et collegiatis*, and others, agree with this. Nevertheless, in the present case, there were resolutions made by the clergy and perpetually mandated for execution, which could not be said to be lacking in episcopal authority, since the Bishop, being aware of them and never disapproving, confirmed them by his tacit consent. However, considering the matter in accordance with general ecclesiastical laws, it was not within the power of the Vicar to grant Anthony a dispensation to perform the duties of the church office gratuitously. The reasons given for the dispensation were the pursuit of studies and a certain office to be performed in the Seminary; but the Defender argued that neither reason justified Anthony's absence, firstly because he was not engaged in studies at a public university, as Reiffenstuel states in *De jure canonico*, book 3, title 4, section 5, and others; and secondly because that absence was solely for Anthony's private benefit; especially since, before the age defined by the Holy Council, Anthony had already been initiated into the sacred Order of the Priesthood. With these and other considerations, the question is to be resolved: Whether the decree of the Curia (N.) is to be upheld in this case.

RESOLUTION. – The Holy Congregation of the Council, having knowledge of the matter on September 22, 1866, responded: The custom is to be observed.

FROM THIS, ONE MAY CONCLUDE: A custom, established beyond the law and constantly observed as if it were a law, has the force of written law.

[*Latin ed. p. 461*]

SERVICES OF THE CHOIR. 461 II. This custom has been observed by the clergy of the parish church as a law, and therefore has had the force of law (1). SHRINES. December 22, 1866. Summary of prayers. A pious family, N., had a sacred shrine, or public oratory, adjacent to their home, which had been built from ancient times for the convenience of that family. This family, as patrons, took care of the maintenance of the oratory and of the offerings made therein; for this purpose, revenues from two vineyards were added to the oratory. More recently, when the family's property was divided among several heirs, and the same vineyards were given as a gift, without any encumbrance, to a certain relative as a patron, both the giver and the recipient took care to provide for the adornment

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of the shrine and the celebration of Masses. But when the house to which the shrine was attached was subsequently rented to several families, the sacred shrine fell into disrepair; and, with religious services neglected, it no longer benefited from their care. The patron, on whose property the shrine was located, considered that, in order to avert disgrace, he should convert that place to profane uses, and (1) It is known that a custom can be of three kinds, according to the three ways in which it can be related to an existing law. One is according to the law, which, that is, interprets and affirms the meaning of the same law; another is contrary to the law, which derogates from a law already in existence; and a third is beyond the law, which, that is, establishes something new that is not prescribed in the law, nor is contrary to the law. In the present case, the matter was of a custom beyond the law, and if any collegiate resolutions were made by the clergy, these were nothing other than expressions of the existing custom, which was observed as a law. But in order for a custom beyond the law to be true and juridical, that is, to obligate as a written law, it is necessary that it appear to have been introduced with the intention of imposing an obligation, or that it appear to have been observed as a law, otherwise it would be resolved into some custom arising from acts and practices, which do not constitute a true and juridical custom.

[*Latin ed. p. 462*]

462. SHRINES. To provide for the divine cult in another way; and so, he explained his intentions to the Most Reverend Father in the following articles: 1° That the altar of the titular saint and the icon of the Crucifix, which was valuable, should be moved to the parish church, of which his family was the patron, and placed there appropriately at his own expense. 2° That he would undertake the responsibility of providing for the adornment of the altar and of celebrating the feast day of the titular saint each year, etc. 3° That he would provide a guarantee to pay 20 ducats each year, etc. Having communicated these requests to the Bishop, so that he might express his opinion, and after hearing the parish priest, the Bishop would report on the value of the annual income and the burdens of each property, etc. The Bishop and the parish priest, having considered the patron's requests regarding the shrine, which otherwise brought no benefit to the people, since it was located in a very poor area and was rarely visited by the people, sent two reports, prepared by designated experts, to ascertain the value of the buildings and land of the oratory, as well as the income from the vineyards. Finally, after inquiries made by the Curia, it was found that no document could be found that referred to the foundation of the oratory.

WHAT IS RECORDED IN THE OFFICIAL MINUTES. — The text of the 21st session, canon 7, of the Council of Trent is quoted: "Since it is also very important that those things which are dedicated to the sacred ministry should not become obsolete through the passage of time and fall

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from human memory, Bishops, even as delegates of the Apostolic See, may transfer simple benefices, even the patronage, from churches which have collapsed through age or other causes, and which, because of their poverty, cannot be restored, calling those whose interests are involved, to the mother church or to other churches of the same place or neighborhood, at their discretion; and in those churches, they may erect altars or chapels under the same invocations, or they may transfer altars or chapels with all the former emoluments and burdens that were imposed on the original churches....) If, however, the church cannot be restored because of poverty, the Holy Synod, in addition to these things, also grants to the Bishops the faculty of converting churches, which are ruined or in profane use, into something else, provided that an altar is erected there." Furthermore, it is noted that the Holy Congregation has, in cases presented to it, opposed the demolition of a church, as in Ravenna on July 29, 1775, and in Iesi.

[*Latin ed. p. 463*]

CHAPELS. 463 Ulionis, August 26, 1780; now, having knowledge of legitimate reasons – the place having been designated for the demolition of a church: among such reasons, it should not be the least that there is a danger of irreverence, which is more easily given in abandoned chapels, especially if the people derive no benefit from them. Therefore, in Fermo, concerning chapels, on December 12, 1761, a doubt was proposed: "Whether it is permissible for the Reverend Fathers Minor Conventual of Fermo to close the chapel of Saint Anthony the Abbot, and to convert it to other uses; and whether the obligations of Masses should be transferred to the altar dedicated to the same Saint, which exists in their larger church in the same city, in this case:" the response was: "affirmative, with the obligation of increasing the number of Masses according to the wish of the Vicar; also in Viterbo, on June 22, 1861, a doubt was proposed: "Whether there is a place for the profanation of the church in question, and accordingly for the translation of the sacred images, furnishings, and all other things existing in the same church, and for the fulfillment of the respective obligations in this case:" the response was: "affirmative in all respects, provided that the prescriptions of the Council of Trent, session 21, chapter 7, on Reforms, are observed." However, since the Reverend Fathers had considered it possible to convert the chapel to profane uses, provision must be made for the translation of the sacred images and the obligations of Masses which have been customarily celebrated in that chapel; although the Bishop could not find the document of foundation, nevertheless, the patron was willing to undertake such obligations in the future, assigning 20 ducats annually. Therefore, in Terracina, on April 14, 1764, the following doubts were proposed: I. "Whether there is a place for the profanation of the rural church of Saint Nicholas in this case?" II. "Whether the sacred images, furnishings, and all other things existing in the same church can be transferred and

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fulfilled respectively in the church of the Nuns in this case?" the response was: "To I. affirmative, according to the wish of the Bishop. To II. affirmative. Having considered these and other matters of duty, and having presented prayers to the Holy Congregation of the Council on December 22, the following was given: DECREE. — The proposed transaction and conversion are to be approved, according to the wish of the Bishop, but with the inscription of a mortgage on the established properties for the security of the annual revenue of 20 ducats, until the sum corresponding to the principal is legitimately and safely invested in favor of the altar, under the care of the Bishop, who also takes care that the chapel is not converted to sordid uses.

[*Latin ed. p. 464*]

AEDI CULAE. 4° 4°. From these [points], the following may be gathered:

I. The Council of Trent strongly urged bishops "that those things which are dedicated to the sacred ministry should not, through the ravages of time, fall into ruin and be erased from the memory of men."

II. If it should happen that churches collapse, and they cannot be restored because of their poverty, then, according to the aforementioned Decree, simple benefices and other pious endowments remaining in that church must be transferred to another church.

III. Care must be taken that collapsed churches are not converted to profane uses.

IV. Among the legitimate reasons for converting churches to profane uses, especially if they are small, is to be considered the very abandonment of them, by reason of which they collapse, and the opening up of the place to irreverence and disgrace, so that the people do not derive any benefit from their restoration (1).

(i) If we are speaking of parish churches that are collapsing, it is much more difficult to come to the decision to demolish them or to convert them to profane uses, as is gathered from the Decree of Trent; for in this case, all remedies of law must first be tried. An example is a case concerning the restoration of a parish church that was brought before the Sacred Congregation on July 27, 1861. A parish church in a certain town was in urgent need of repair, but a noble lady, the patron of that church, was abstaining from providing for the repairs. The following questions were proposed: 1. "Is the patron (N.N.) obligated to restore the parish church of the town (N.)? And, to the extent that the answer is negative: 2. How, and by what means, should the restoration be provided in this case?" The following response was given: To 1. "Affirmatively, giving her a term of three months to complete the repairs, and if, after that time has elapsed, she fails to do so, there will be grounds for the loss of the patronage." To 2. "In the case of the loss of patronage, the people and the property owners are to contribute

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according to their means." That is, in proportion to the goods of each. You can also see the case concerning the transfer of a parish related in "Votum," page 217.

[*Latin ed. p. 465*]

FROM THE HOLY CONGREGATION OF BEATIFICATIONS AND CANONIZATIONS, CONCERNING THE SERVANT OF GOD, CLEMENT MARIA HOFBAUER, PRIEST, MEMBER OF THE CONGREGATION OF THE MOST HOLY REDEEMER, AND PROPAGATOR OF THE SAID CONGREGATION BEYOND THE MOUNTAINS. What Saint Alphonsus, the founder of the Congregation of the Most Holy Redeemer, had foretold concerning his disciple, Clement Maria Hofbauer, came to pass. Indeed, twenty-six witnesses, in a process most carefully constructed in the Archiepiscopal Curia of Vienna, testify: "I find evidence of the holy life of Father Hofbauer, even from the time when he was first in the houses of the Romans, in that which Saint Alphonsus, the prophet, spoke of, namely, that he would be of great benefit to the Church, and that, in the end, he would give him his holy blessing; to which corresponds another witness, the first in order, who likewise testifies that the holy Founder of the Congregation, upon the arrival of the Servant of God, declared that he would accomplish many good works, and would propagate the Congregation." But let us not stray from our institute; we shall recount the life of the Servant of God, through a summary, keeping in mind the nuptial commentary on his life, which has been compiled by the most learned Procurator of the Cause, Hilarius Alibrandi, professor of civil law in the Roman Archigymnasium.

A SKETCH OF THE LIFE OF THE SERVANT OF GOD. — The Servant of God was born in the town called Tasswilz, in the province of Moravia, in the diocese of Olmütz, now of Brunensis, on December 26, 1761; he was named John at the font. He was orphaned by his father before he had even left infancy. His most pious mother, who had few resources and many children, while attending to the religious education of John, in the first place,

[*Latin ed. p. 466*]

466. AT VIENNA. It is said that, when he was young, he brought his son before an image of the Crucified Christ and said to him: "Behold, he is already your father now; pay attention so that you may walk the path that is pleasing to him." The Servant of God kept these words firmly in his heart and nourished them with his thoughts. In his childhood, he found great joy in fasting in honor of the Blessed Virgin or some other Saint, so that he would only eat in the evening, observing a fast for the entire day. It was pleasing to him to distribute to poor children the food that he himself had received. He was diligent in his studies of prayer, and, being displeased with idleness, he, even as a young boy, could scarcely tolerate

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the presence of those who wasted their time. When he spoke to his mother about this, he replied: "If they have nothing to do, let them pray." He longed to be initiated into the sacred priesthood, so that, as a priest, he might gain souls for Christ; but the difficulties of his family's circumstances stood in the way. When he reached the age of sixteen, he went to the neighboring town of Znaim to learn the baker's trade, and, having been instructed in that art, he went to the monastery of Bruck, which was inhabited by the Premonstratensian Order, in order to practice the art he had learned there. The task that was subsequently assigned to the Servant of God there did not entirely prevent him from dedicating some time to learning, nor did he neglect to beseech God to recognize the path to which he had been called and to fulfill his vocation. But a singular love for solitude attracted the Servant of God to the eremitical life; he chose this way of life at the beginning; and therefore, four years later, he requested a place at Mühlfrauen, which is located a half-hour's distance from Tasswitz, and which has a church frequented by many pilgrims. A forest is located far away from there; he went there with his older brother, the Servant of God. The eremitical dwelling offered him and the pilgrims a pious and holy prospect, until such a way of life was forbidden by the authorities; and therefore, he again requested to go to Vienna. What he did there is recounted among the other witnesses, as follows: "In Vienna, (the Servant of God) worked in the baker's trade; when he felt a desire to travel to Rome, he..." (I) Among the testimonies in which "it is stated how much the Servant of God was displeased with idleness later on, it is not, as Father Kosmaczech told me, that he used to say; the testimonies of the more learned priests are to be preferred to the testimony of the fourteenth witness, who stated: "As far as the use of time is concerned, they must, so to speak, scarcely be able to breathe, for nothing is more harmful to them than idleness."

[*Latin ed. p. 467*]

VIENNA. In the year 167, he revealed his intentions to a friend, namely Peter Kunzmann, who, under the name Emmanuel, was a lay brother in the Congregation of the Most Holy Redeemer. These two virtuous young men spent several months saving money, so that they could then undertake a journey to Rome. They successfully completed the entire journey on foot, and safely arrived in Rome. After fulfilling their devotions and visiting the churches, they returned to their homeland, strengthened in their faith. Both of them again practiced the baker's trade in Vienna, but Hofbauer could not long endure the turmoil of the world; scarcely two years had passed when he felt called to renounce the world. After another conversation with his friend, Peter Kunzmann, they both decided to once again journey to Rome and to choose a monastic life under the patronage of Pius. The young men from Vienna set out on foot. Through cities and villages, on public roads, they prayed and sang spiritual hymns, both day and night. They had

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already left the world behind, and the cheerful pilgrims hastened to their destination. Happily, they entered Rome and again fulfilled their devotions there. Then, the pilgrims sought a place, not far from the city, where they could live a monastic life. They went to Tivoli, and they asked the Bishop of that time, Chiaramonti (who later was elevated to the Chair of Peter as Pius VII), for permission to live a monastic life, and for the habit that is fitting for this state. Having considered their intentions, the Bishop granted them permission, clothed them in the habit they desired, blessed them, and assigned them a place, commonly known as: La Madonna di Quintiliolo. Afterwards, the Servant of God changed his name from Johann to Clement, and his companion's name from Maria. About six months later, through a better understanding of God's will, and without saying a word about it to his companion, he left the hermitage and returned to Vienna. By a singular providence of God, three pious women, as is commonly said, unexpectedly learned of the Servant of God's desire to embrace an ecclesiastical life, and they took care of him, providing the expenses necessary for food and studies. When he then noticed certain unsound and unsafe doctrines that were prevalent at that time in the University of Vienna, he decided to return to the city, in order to draw knowledge of divine things from a pure source. He had Thaddeus Hiibl as a companion in this plan, and they made the journey on foot.

[*Latin ed. p. 468*]

468. Vindobonae, cum desiderium magnum habebat, Deum ferventer imploravit, ut ei indicaret in quo statu ei serviret, et ut religioso cuiuspiam instituti nomen daret, in quo regularis observantia maxime floreat. Decisa est, cum Thaddaeo Hiibl, postridie, ad illam ecclesiam, unde primo sonitum sacri aeris audiverant. Hoc signo audito ab ecclesia S. Iuliani in Exquiliis, eo itinere se contulerunt, et ibi religiosos invenerunt, sodales precibus vacantes. Dicitur puerum, qui ad fores stabat, Servum Dei rogasse: "Quid sunt hii Sacerdotes?" Et responsum accepisse: "Sunt Sacerdotes Congregationis SSmi Redemptoris, et tu quoque unus eorum eris." Haec responsio movit Deum, Servum, qui illam vocem quasi oraculum divinitus sibi datum accipivit. Superiorem adiit, a quo, accepta peculiari notitia de Instituto, petitionem fecit ut admittatur, et hoc ei, et pro socio suo, impetratus est. Eo tempore, anno scilicet 1784, aetatis suae annum 33 agebat Clemens, cum tristissima tempora Ecclesiae Dei et humanae societati imminerent: et dum clades et ruinas per asseclas suos, Satanas, moliebatur, iam eos, qui illa respararent, Deus parabat. Quomodo in novitiato se gesserit, non est hic narrandi locus, sed praeterire silentio nolo id quod testis XXVII, his verbis deposuit: "Accidit, ut plures Congregationis novitii, plus aequo commoditati indigentes, pro quaelibet deambulatione, lineas vestes (indusia etc.) secum contulissent. Magister novitiorum, cum iuvenibus suaviter agens,

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et eis aegre aliquid denegans, hoc illis concedebat; unde factum est ut in quavis deambulatione, curandum esset, ut indusia etc. praesto essent, quibus idemque, pristinis depositis, induerentur. Quodam die candissimo, cum tyrones deambulatum deducendi, res desideratas omni cum sollicitudine pararent, fervens Hofbauer, id silentio diutius ferre haud valens, magistrum adiit, dicens: "Reverende Pater, ecce quomodo hic sto, uno indusio, una veste, his br acis, pileo, et baculo inter feci quadrigentarum leucarum, sanitatis detrimentum haud passus, et hic, pro deambulatione duarum leucarum, tantae sunt semper praeparationes faciendae!" Ex eo tempore, omnes tyrones Zelum Hofbauer timebant; iste omnibus in rebus omnibus erat exemplo."

[*Latin ed. p. 469*]

VIENNA. 469 Having completed his novitiate on the feast of Saint Joseph in the year 1785, he entered the religious community of Saint Julian, and subsequently received priestly ordination in the diocese of Verulana. Once ordained a priest, he felt a strong desire to spread the Congregation in Germany, as the holy Founder had desired. When a suitable opportunity arose, namely through a mission, he obtained permission, was provided with ample resources, and, accompanied by Father Hiibl, set out for Germany, and then entered Poland, where he devoted himself to sacred missions. This marked the beginning of the apostolic life of the Servant of God: it is truly astonishing how much he endured, both in Poland and in the regions of Germany; how steadfast he proved to be in the face of adversity, and how abundant was the harvest he and his companions reaped in those regions through their ministry. As a general vicar appointed beyond the Alps, a position he held until his death, he not only established houses both in Poland and in the regions of Germany, but he was also zealous in his ministry in the preaching of the Word of God, in hearing confessions, in the Christian education of children, in establishing missions throughout villages and towns, in instructing and sending forth his companions, many of whom he attracted, and in other duties of the sacred apostolate. Finally, after many years of arduous labor in the regions of Germany and Poland, to which he seemed to have devoted his greatest attention, he was forced, due to the persecution aroused against him, to leave with his companions, and in 1808 he went to Warsaw, where he spent almost the last twelve years of his life. Furthermore, the witness (XXIX) states: "I then heard of a mission station existing in Nicopolis, whose members, namely, the presbyters N. N., I personally knew, and I know that among the Catholics in Nicopolis, to this day, the memory of the apostolic labors of these missionaries is held in high regard." As for the other houses in Germany and Switzerland, I only know that they were often abandoned due to changes in circumstances. But after enduring many persecutions, he saw how the work he had undertaken was crowned: "Some people," (the same witness speaks from his

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own knowledge) "who held positions in the public administration,"

[*Latin ed. p. 470*]

470 VIENNA. Certain individuals among the people, who bore hatred towards the labors of Father Hofbauer, seized upon the opportunity presented by a civil law still in force at that time, which prohibited any priest from having dealings with a superior authority outside the hereditary Austrian lands, and initiated a certain investigation to which Father Hofbauer and all of his writings were subjected. They perceived Father Hofbauer as a member of the Austrian Congregation, which did not actually exist in Austria, and therefore, by obedience, as being subject to its superior general. They offered him a choice: to declare himself either to the Congregation or to the state. Without hesitation, and compelled by circumstances, Father Hofbauer chose the latter, which was the option desired by his enemies, in order to assert that Father Hofbauer had voluntarily abandoned Vienna and Austria. Prominent and powerful friends of God, even the Archbishop of Vienna at that time, Count Hohenwarth, immediately interceded with their Most Excellent Imperial Majesty, Emperor Francis, to have the announced exile of the Servant of God revoked, and they obtained from the just Monarch a postponement of the announced exile, until the time when he would travel to Rome to visit the then-reigning Vicar of Christ, Pope Pius VII.

Received with paternal charity and royal generosity in Rome by Pope Pius VII, Emperor Francis I wished to be certain of the opinion held regarding the Servant of God within the Roman Curia. The Supreme Pontiff raised him up with the highest praises, calling him "a truly holy and apostolic man, the pride of the Church," and congratulated him on having such an eminent priest in the city of the Emperor. Thus, one witness (IX) recounts. Consequently, another witness (XXIX) narrates: "The honorable declarations and commendations favorable to Father Hofbauer, received from the Austrian Monarch in the city itself, convinced the Emperor of the innocence, indeed the great value, of this man, and the first act of grace after his return was that of the Emperor, who, through the courtly parish priest of that time, Abbot James Frint, invited Father Hofbauer to request forgiveness from the Emperor for the injustices he had suffered." Father Hofbauer, seeking nothing for himself, instead of requesting forgiveness, asked for the opportunity to establish, in Vienna and in Austria, a Congregation of the Most Holy Redeemer; and this is precisely what was done, and from which the foundation of the Congregation in Vienna originated.

[*Latin ed. p. 471*]

VIENNA. 471 And in Austria, and thence in almost all regions of Europe, indeed, and in both North and South America, it spread. The Emperor graciously accepted the petition. With this remaining difficulty removed,

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the Servant of God, desiring to be dissolved and to be with Christ, and foretelling that his death would cause many to build houses, was seized by illness on March 15, 1820, and exchanged his mortal life, full of labors, so often tossed by storms, so marked by merits, for eternal blessedness. After such a simple account of the life of the Servant of God, it would be necessary to expound his virtues and his reputation for sanctity; which his diligent Advocate did most carefully, and, according to custom, he recounted at length the virtues exercised by the Servant of God in a heroic degree, namely: heroic faith, in which the Servant of God was firmer than iron and stone, as testified by witnesses; heroic hope; charity towards God; charity towards one's neighbor; prudence; justice; fortitude; temperance; humility; poverty; chastity; obedience and perseverance; supernatural gifts; miracles in life; the reputation for sanctity in life; the precious death of the Servant of God; the attendance at the funeral and burial; the reputation for sanctity after death; miracles after death. A Synoptic Discussion. The nature of these matters is such that, due to their very extent, they cannot be summarized in our publications. However, we will mention one or two observations made in opposition, before the cause is presented to the judgment of the Holy Congregation. CERTAIN POINTS RAISED BY THE DEFENDER OF THE FAITH. The Defender of the Faith, recalling the cause to the truth, brought forward all those things which seemed to obstruct the introduction of the cause. Furthermore, nothing worthy of censure was found concerning the ordinary preparation of the process, and indeed, it could not fail to be praised, which is a great honor to the Viennese Curia. Thus, the Defender of the Faith wrote in the first chapter, which concerns the Proofs: "It should be inquired first, whether the process from the Archbishop of Vienna suffers from any patent defect of nullity." But, on the contrary, he showed such diligence, such...

[*Latin ed. p. 472*]

472 VIENNA. "It was examined with piety and diligence, so that it scarcely differs from an Apostolic process, if one disregards the authority of the accuser; which can be said of all processes of Ordinaries, as the learned Benedict XIV states in book 2, chapter 44, paragraph 21, at the end."

"Therefore, the Examiner turned his attention to the matters reported in the process, inquiring whether they were sufficient and more than sufficient to resolve the doubt with a positive answer; among other things, he noted this: 'Since so many opposing individuals, even among the servants of God, have testified, only those who confessed that they held a great love for him testified. Indeed, Witness I said: 'I have been and still am devoted to him with all my heart.' Witness II ingenuously said of himself: 'My opinion of the Servant of God could be considered suspect and prejudiced, because I felt a love for him that was above all measure, and paternal.' And Witness

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IX said: 'I hold Father Hofbauer in such high esteem that, since his death, I invoke him in all my affairs, and I earnestly desire that the Church canonize him...' I am not one who would reject this friendship, yet everyone knows that in any just judgment, the testimony of friends and acquaintances carries considerable weight. Indeed, love is a powerful thing."

"Among other things that the Defender of the Faith noted regarding the second section, which concerns reputation, was that not all men of even the best reputation held the same opinion of the Servant of God; for this, Witness 11 testified: 'The Servant of God was unknown to me; he devoted all his efforts to honoring Saint Alphonsus and to promoting his Congregation, a devotion that many of his friends also objected to, considering it to be too particular. Thus, for example, I often heard the opinion of Canon Frederick Werner, who at that time contributed greatly to promoting the Catholic faith in Vienna: 'Father Hofbauer would have been a perfect man of sanctity if he had not, on every occasion, tended too much to the foundation and growth of the moral mission.'"

"This indication, the witness concludes, should not be turned against a virtuous man, because he always had the universality of the Church before his eyes."

THE PROSECUTOR. "The prosecutor, in this preliminary discussion, emerged all the more triumphant the more subtle were the opposing observations. First of all, he..."

[*Latin ed. p. 473*]

WINDESHEIM. In the year 473, a matter was brought before the tribunal under the heading of "proofs," and it was established that, in the initial stages of this judgment, it was necessary to demonstrate: "that the reputation of virtues and miracles attributed to him remained fully intact." For, "it is not necessary to prove in detail the virtues and miracles (for this is reserved for a later judgment...), but it is only necessary to prove the reputation of virtues and miracles." – Benedict XIV, L 2, c. 36, § 2, and 13. And proceeding with the defense of the cause, the Advocate, after a short while, addressing the objection that had been raised, with full force of argument, explained why those whom the Servant of God had encountered had not testified: "For it was necessary to bring forward honest and prudent witnesses (these are the Advocate's remarkable words); but among the heterodox, atheists, and rationalists, enemies were to be sought; for these were the people whom the Servant of God had encountered, precisely because he had bravely resisted their errors and their schemes. Among his household, he had Father Sabelli, not an enemy, but formerly, a stubborn, unyielding, and irascible man, whom we have shown to be prone to false mysticism, and easily deceived, in whom, although we readily concede that he possessed integrity, greater prudence would have been desirable...." As for the others who had known the Servant of God while he was alive, if

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they were not wicked men, all were greatly attracted by his outstanding virtue, his gentle manners, and his exquisite courtesy, and they loved him very much. As a Superior, he enjoyed the willing obedience of his subordinates, as the first witness testifies from his office, and he himself was subject to his superiors, and they loved him so much that they were happy to entrust to him the most important task (witness XXVI). He was loved by St. Alphonsus, who foretold that great and glorious things would be accomplished by him through divine inspiration. He was loved by Pius VI, who declared that the spirit of St. [Alphonsus] had been infused into him (Tannoia, *Vita di s. Alfon.*, Appendix to Book IV). He was loved by Pius VII, who called him a truly holy and apostolic man, the pride of the Church, and he congratulated the Emperor for having such an outstanding priest in the city of the Imperial capital. He was loved by Augustus Francis I, who showed himself to be very favorably disposed towards the Servant of God, and who lamented greatly his death, because the Church and the Empire had suffered a great loss (witness IX). He was loved by Ferdinand I, and with him, the entire people, because the Prince was zealous in religious matters.

[*Latin ed. p. 474*]

474 In Vienna, let it be declared. "We still recall with great delight the day when, through the most cherished memory, he [Clement] resided in the city, the capital of the Empire; and there, the people's esteem and love for him grew so much that he was already openly recognized as a saint." The Kings of Poland, Bavaria, and Saxony loved him, one of whom showered him with benefits, another entrusted him with secrets of conscience, and a third greatly enhanced his authority (witnesses VI. XIX and IX).

The Censorship seeks someone offended and an adversary of the Servant of God, but where and in what order will it find them? Not among the Cardinals of the Holy Roman Church, from whose Sacred College, the Most Reverend Rudolph, Archduke, Consalvi, Odescalchi, Litta, Testaferrata, Saluzzo, Cappacini, Severoli, and De Rauscher were his close friends. Not among the Archbishops and Bishops, for the pastor of Vienna, Count de Hohenwarth, who was subordinate to him, was most devoted to him (witness II), and without hesitation declared to Her Imperial Majesty that this was the best priest he had in his diocese (witnesses). Furthermore, the prelates of Warsaw, Gnesen, Prague, Seccoviensis, Sankt Pölten, Linz, and others, some of whom, being fathers of their people, chose him as their spiritual father, supported him. The Censorship will not find adversaries of Clement among the lower clergy, since the clergy, both regular and secular, held the Servant of God in great honor and frequented him... they esteemed him so highly because of his virtues (witness V). Not among the laity, nobles, and those distinguished with honors; for all of those of that kind held him in sincere and unwavering veneration and love (witness

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II). Not among those who were devoted to learning and renowned for their intellect, since the Servant of God irresistibly attracted men of great intellect and learning (witness XX). Not even among the heterodox, the more prudent and just among them, for it has been shown that learned Protestants... preserved a wondrous veneration and love for him, drawn to him by his very presence (witnesses H and XXVI).

Therefore, all, all those who could have been called witnesses, would have been found infected with this "stain" of love (if a stain it can be called). By all who knew him, and who were people of any condition, the Saint was considered a man (witness XV). Therefore, it remained that...

[*Latin ed. p. 475*]

"IN VIENNA. There was a refuge for atheists, impious men, conspirators, the most flagitious individuals, and others... who, for the sake of decency, are remembered; but is it fitting that these should be brought before the archiepiscopal court and a sacred place for the sake of the most holy cause? Outside are dogs, sorcerers, the unchaste, murderers, and those who serve idols, and all who love and practice falsehood (Apocalypse XXII. 15). But we require truthful witnesses." And this was not enough, for perhaps the force of truth expressed something good, even by those who were offended by the Servant of God, since the man was considered holy even by his adversaries (Testimony VII). But I say that this was not enough, for the law requires that witnesses be called who, by their integrity and gravity, inspire confidence, lest calumny be feared. But among the witnesses presented, none were dishonest or untrustworthy; indeed, as the legitimate Judge, the Most Reverend Archbishop of Vienna, declares, all deserve the utmost faith and authority. Only one thing remains for me to note, who know my flock well, namely, that the witnesses presented by the Prosecutor, and other witnesses and objections introduced by the office, are all of unquestionable faith, being men of integrity and of the highest standing.

The Orator indeed argued this point, but he did not overlook the question of law, namely, whether an exception should be considered against witnesses summoned out of benevolence; and he resolved this matter both by the authority of Benedict XIV, book 3, chapter 6, and by the practice of the Holy Congregation, which has sought to reject such exceptions in other cases. Regarding the second part of the objections mentioned, the Orator spoke more at length; he showed that Frederick Werner, who was also called Zacharias, had been converted from heresy to the Catholic faith shortly before, in the year 1815. Although, after his conversion, he burned with zealous fervor for the preaching of Catholic truth, and excelled in oratory and poetry, he was unable to bring to the sodality a zeal equal to that of doctrine: "Werner," says the fourteenth witness, "did not possess such solid knowledge of dogma," and therefore, Father Hofbauer, knowing

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this well, would attentively listen to his sermons. One day, however, it happened that Werner pronounced a judgment less Catholic. Returning to the sacristy, Father Hofbauer said to him: "What you said (and he indicated the proposition) is not Catholic." The following Sunday,..."

[*Latin ed. p. 476*]

VIENNA. "You must clearly understand this," and so Werner did, although he sought to expose his own merits. It is not new that men distinguished by doctrine and piety, even though they love and esteem each other greatly, may disagree on certain matters; therefore, prudent men of public law often say that it is necessary for a republic, even if it were composed of angels, to have a governing power. The esteemed Orator, drawing a comparison between the two men, showed what the Servant of God should have firmly considered, given the account of his previous life: namely, that it was fitting for the good and salvation of the Church and of all of Germany to establish and promote the foundations of missionary houses; whereas Werner, after long delays in the darkness of heresy, was finally converted to the Catholic faith, and, having been diligently trained in the application of the precepts of Quintilian through long practice, and having written poetic works in which Schiller, Goethe, Bürger, Haller, Klopstock, Ramler, and Gleim expressed the German lyre, was eminently suited by his lively style to move hearts; but, since he was still a novice in those matters that concern a deeper knowledge of the Saints, he had reflected somewhat less zealously and more languidly on the growth of the missionary houses. If Dominic, Francis, Ignatius, Philip Neri, Camillus, and other founders had held the opinion of Werner, the Catholic name would not be able to boast of such flourishing religious families. Indeed, the Orator concluded that that vehement, unwearied, and steadfast pursuit of study, which was pleasing to the Viennese poet, was (according to the testimony of Her Imperial Majesty) the cause by which so many good things were produced for the Church and the Empire. In fact, almost all the houses of the Congregation have been widely spread and propagated even to America; all are daughters of Vienna, as declared by Em. De Rauscher, and for this reason the Servant of God is called: the second founder of the Congregation of the Most Holy Redeemer. Doubtful. Whether it is necessary to mark the introduction of the cause in the case and to the effect of what is being discussed. RESOLUTION. – The Holy Congregation of Sacred Rites, having heard the voice and writings of the Reverend Father D. Peter Mirtetti, Promoter of the Holy Faith.

[*Latin ed. p. 477*]

WINDEN, February 9, 1867. After careful consideration, the response is: Affirmative, if it pleases His Holiness. Having received the faithful report from the Reverend Father Secretary D. Bartolini, and considering the Re-

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script of the Holy Congregation to be valid, His Holiness signed with his own hand the commission for the introduction of the cause of the VENERABLE SERVANT OF GOD, CLEMENT MARY HOFBAUER.

From these few points, one can gather:

I. That an exception, based on love and benevolence, should not generally be made against sworn witnesses if it is established elsewhere that they are legally capable of testifying and are of good character.

II. That no one is loved and cherished more sincerely and deeply by Christian people than the Priest who excels in all Christian virtues, and who dedicates himself entirely to the ecclesiastical ministry (1).

III. For Christian virtue, the more it shines forth in deeds, the more it is loved.

IV. Therefore, universal benevolence should be considered as a consequence of the Christian virtues with which a Servant of God is eminently endowed.

(1) It is not written in vain: "How beautiful are the feet of those who bring good news, of those who announce peace, of those who say to Zion, 'Your God reigns!'" (Romans 10:15). The Apostle Paul experienced this, and constantly experiences it, although often through great tribulations. Rebuking the Galatians for their fickleness, he recalls the signs of love that had been shown to him previously (Galatians 4:10 and 16): "You did not spurn me, but you welcomed me as if I were an angel of God, as if I were Christ Jesus yourselves." Where is the blessing then that you now claim? "For I tell you, if anyone has the gift of prophecy, or of speaking in tongues, or of interpreting, and does not love, he is like a sounding gong or a clanging cymbal." (1 Corinthians 13:1). And Acts 20:37 and 38: "And they all wept bitterly as they embraced Paul and kissed him, and they accompanied him to the port."

Let those who boast of a new humanism, rejecting and abhorring ecclesiastical voices, be mocked, who, proclaiming themselves philanthropists, promise a new and unheard-of happiness; for true and fruitful philanthropy is only Christian charity, and true philanthropists are apostolic men, who not only nourish the minds and hearts of men with salutary teachings, but also know how to provide for their other needs as opportunity arises; and among many others, Vincent de Paul gave a most illustrious example of this.

[*Latin ed. p. 478*]

478 CONCERNING THE BEATIFICATION OR DECLARATION OF MARTYRDOM OF THE VENERABLE SERVANTS OF GOD: ALPHONSUS NAVARRETE, OF THE ORDER OF PREACHERS, PETER OF AVILA, OF THE MINOR ORDER OF ST. FRANCIS, PETER OF ZUNICA, OF THE ORDER OF ST. AUGUSTINE, CHARLES SPINULA, OF THE SOCIETY

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OF JESUS, JOACHIM FIRAYAMA, OR DIAZ, LUCY FLEITES, AND COMPANIONS, BOTH FROM THE SAID ORDERS AND ALSO FROM THE SECULAR CLERGY. REGARDING CERTAIN DOUBTS: Firstly, "Whether, with the approval of the martyrdom established by the tyrant, it is also established concerning the martyrdom of the sufferers, so that the process may proceed to further stages." Secondly, "Whether, and concerning which miracles or signs, there is evidence in this case." DECREE: "Besides those six and twenty Japanese martyrs, whom the Most Holy Pope Pius IX, for the honor of the Holy and undivided Trinity and of the Church, the Catholic faith, has added to the list of Saints, many other Christian heroes existed in the same Japanese Empire, who were put to death for the same Catholic faith, from the year 1617 until the year 1632. The catalogue, taken from the process records of the five above, shows a number exceeding two hundred. Among them are apostolic men of faith and masters of religion, together with their ministers in the instruction of the faithful; noble dynasts, endowed with royal dignity; wealthy matrons; tender virgins; aged men; ingenuous youths; boys and girls of three or four years of age. Many were tied to stakes and burned for many hours; some were beheaded; others were cruelly torn and cut limb by limb; not a few were thrown into volcanic chasms, and after a long time, were vexed and consumed by sulfurous and boiling waters; and many, during the coldest winter, died immersed in the ice of lakes."

[*Latin ed. p. 479*]

1AP0NEN. For a long time, the severity of the persecution was extreme; some were led to the cross, head down; a few, weakened by famine and hardship, breathed their last in the most dreadful prison. Thus, they became strong in the struggle; they passed through fire and water; they were cut; they wasted away abundantly in prisons; they were fastened to the cross for Christ, that Christ might live in them; they died by the sword; but the praise of the Lord did not depart from their mouths. In this immense persecution, which spread widely throughout Laponia by order of the Prince, so many and such valiant defenders of the faith gave proofs of invincible fortitude, so that the most illustrious examples, which occurred in the ancient persecutions of the Church, were completely renewed. Among them, prominent as leaders of this army, were Alphonsus Navarrete, Angelus Orsucio, Franciscus Morales, Petrus de Avila, Riccardus a Sancta Anna, Ludovicus Soldo, Apollinaris Franco, Petrus de Zuniga, Bartholomaeus Guttierez, Vincentius Carvaglio, Carolus Spinula, Franciscus Paceco, Camillus Costanzo, Hieronymus de Angelis, from the distinguished Orders of the Preachers of the Most Holy Name of Jesus (Ordinis Praedicatorum s. Dominici), the Minor Friars of the Most Holy Francis (Minorum s. Francisci), the Hermits of Saint Augustine (Eremitarum s. Augustini), and from the illustrious Society of Jesus, along

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with many others of the same Orders; Ioachimus Firayama, also known as Diaz; Thomas Xiquiro, Andreas Tocuan, Simon Quiota, and Magdalena, his wife; Gaspar Gotenda, with his mother, Apollonia; Magdalena Kyota, who were of the royal lineage of the Bungensians, Arimensians, and Firandensians; Antonius Coray, his wife, Maria; John, a young man of twelve years, and Peter, a boy of three years, their sons; Lucia Fleites, an octogenarian, and Dominicus Giorgi, with his wife, Elisabeth Fernandez, who, when her son, the little boy Ignatius, four years old, was led to the martyrdom by the lictors, stirred him up to ask for a blessing from Carolus Spinula, before they would die together; but soon, when this little boy had seen the head of his most beloved mother cut off and rolling before him, and, with dry eyes, understood that he would then be killed, he bared his neck and offered it to the lictor to be cut with the cruel sword. These, and others, followed them, citizens of Laponia, associated in martyrdom, up to the number previously noted. Immediately after the triumph of the martyrs, informative proceedings were instituted, which, after being discussed in the Congregation of Sacred Rites, were presented at the request of the King of Spain, the illustrious family of Spinula, and Or-

[*Latin ed. p. 480*]

480 JAPAN. The Supreme Pontiff Urban VIII, Defender of the Faith, signed with his own hand the commission for this cause; and on the twelfth day before the Kalends of December in the year 1627, letters were dispatched, authorized by Apostolic authority, to institute inquiries. Therefore, after the proceedings had been completed both in Manila, in the Philippine Islands, and once and again in Macao, in China, and after these had been transmitted to Rome, and after their validity had been examined according to custom, the Supreme Pontiff Innocent XI, granted, on the thirteenth day before the Kalends of April in the year 1677, a special Congregation of Sacred Rites, where, with the advice of the Reverend Fathers, Promoters of the Holy Faith, it was decided that first, the question regarding the first part should be proposed, namely: "Whether there existed martyrdom by the tyrant in this case." This matter was then discussed in another special meeting of the same Congregation of Sacred Rites on the eighth day before the Kalends of February in the year 1687, and a decree was issued, approved by the same Supreme Pontiff: "That there existed martyrdom by the tyrant in the case in question." Then, it was necessary to consider the question regarding the other part, namely: "Whether there existed martyrdom by the sufferers." However, by an incomprehensible decree of Divine Providence, this most celebrated cause, as the Supreme Pontiff Benedict XIV calls it, remained silent until these times, due to various circumstances. But now, because of the canonization of six and twenty martyrs, a great abundance of graces has flowed from the goodness of God upon Japan, as the Vicars Apostolic, who preside over

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this kingdom and neighboring regions, explain in their postulatory letters; and they have conceived a firm hope that more abundant fruits of divine assistance will follow, if the remaining soldiers of Christ are enrolled in the glorious heavenly army; and since, due to adverse circumstances and calamities succeeding one another, it is necessary that assistance be provided by the Lord, through the multiplied intervention of heavenly citizens, so that our enemies may never dominate us; the Most Holy Pope Pius IX, graciously accepting the prayers of the postulators of each order, conceded that the cause be resumed; and, with the same judicial form observed, he chose a special Congregation of Sacred Rites, which, with the vote in favor of the truth of the Reverend Fathers, Promoters of the Holy Faith, would bring the cause to its conclusion. This special Congregation is held before the Most Reverend;

[*Latin ed. p. 481*]

In the year 1817, the Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, Prefect of the same Congregation, and Relator of the Cause, was summoned once and again. And after the doubts were proposed, namely, first, "Whether, with the approval of the martyrdom on the part of the tyrant, it is so established concerning the martyrdom on the part of the sufferers that it may proceed to further steps." Secondly, "Whether, and by what miracles or signs, it is established in this case." Then the Cardinals and the Official Prelates expressed their opinions. However, the Most Holy Lord Our Pope, after receiving a report from the faithful Secretary of the Congregation of Sacred Rites concerning all matters, did not immediately confirm the opinions of the Cardinals and Prelates with His supreme judgment, but, carefully considering that this matter was of the greatest importance and significance, He invoked the Spirit of wisdom and understanding, that He might be favorably assisted in making a just judgment. Finally, He designated a day, namely, the Wednesday after the Sunday of Sexagesima, on which the solemn commemoration of the Passion of Our Lord Jesus Christ is observed, whose chalice the martyrs of Lapona had deserved to drink. Therefore, after the Most Holy Lord Our Pope had offered the sacrifice at the appointed time in the private chapel near the Vatican palaces, He went to the Roman College of the Society of Jesus, annexed to the church of Saint Ignatius, where, seated on the upper hall in the large throne, He received the Most Reverend Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, together with the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, with them present, He pronounced on the first doubt: "Whether it is established concerning the martyrdom on the part of the sufferers, so that in the case in question, it may proceed to the Beatification," and concerning the second doubt, "Whether the signs IV,

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XII, XIII, XIV are established." This decree was ordered to be published and recorded in the Acts of the Congregation of Sacred Rites. On the seventh day before the Kalends of March, in the year 1757.

C. E. p. Porto and Santa Rufina, Cardinal Patrizi, Prefect of S. R. C.

D. Bartolini, Secretary of S. R. C.

[*Latin ed. p. 482*]

DECREE CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, JOANNA DE LESTONAC, FOUNDRESS OF THE ORDER OF THE DAUGHTERS OF BLESSED MARY THE VIRGIN.

In the cause of the beatification and canonization of the aforementioned Venerable Servant of God, Joanna de Lestonac, when it was necessary to proceed in the Ordinary Congregation of Sacred Rites concerning the validity of all proceedings in said cause, the Reverend Monsignor Gustavus Gallot, Honorary Chamberlain to His Holiness Our Lord Pope Pius IX, and Postulator of the cause, obtained that the following question be proposed to the Ordinary Congregations of Sacred Rites held today in the Vatican, by the undersigned Cardinal Prefect of the aforementioned Sacred Congregation: "Whether it is established that the proceedings, both those of Apostolic and ordinary authority, of the founders are valid; whether the witnesses have been duly and properly examined, and whether the testimonies produced have been legitimately obtained, in the case and to the effect of which we are speaking."

Furthermore, the Reverend Fathers entrusted with the safeguarding of sacred rites, after a careful examination of all matters, having heard the Reverend Father Peter Minetti, Promoter of the Holy Faith, judged it fitting to write: "After prior correction of defects, and after the extrajudicial documents concerning the Apostolic Process of Bordeaux, as well as Witnesses VI, VII, VIII, and IX, have been removed, IT IS ESTABLISHED." February 9, 1867.

Furthermore, a faithful report of the foregoing was made to His Holiness Our Lord Pope Pius IX by the undersigned Secretary, and His Holiness deigned to ratify and confirm the judgment of the Sacred Congregation. February 14, of the same month and year.

C. Episc. Portuen. et s. Rufinae, Cardinal PATRIZI, S. R. C., Prefect.

L. S. D. BAUTOLIIU, S. R. C., Secretary.

[*Latin ed. p. 483*]

Regarding the Beatification and Canonization of the Venerable Servant of God, Father Didacus Josephus Agadus, Priest, Professed of the Order of Minor Friars of Saint Francis, of the Capuchin Observance: Decree.

"At the urgent request of the Reverend Father Joseph a Lirena, Priest,

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Professed of the Order of Minor Friars of Saint Francis, of the Capuchin Observance, Postulator of the Cause of the Venerable Servant of God, Didacus Josephus a Gadibus, aforementioned, and after the Most Eminent and Reverend Cardinal Charles Augustus de Reisach, Promoter of this Cause, proposed the following question in the Ordinary Assemblies of the Congregation for Sacred Rites, held today at the Vatican: 'Whether the judgment of the Judge delegated by the Bishop of Malaga, concerning the aforementioned Cult dedicated to the Venerable Servant of God, or concerning obedience to the Decrees of His Holiness Urban VIII, should be confirmed in this case, and to the effect of what is being discussed.'

Furthermore, the Most Eminent and Reverend Fathers entrusted with the safeguarding of the Sacred Rites, after careful consideration of all matters, and after hearing the voice, and the written opinion, of the Reverend Father Peter Minetti, Promoter of the Holy Faith, judged it fitting to respond: 'Affirmatively.' On the 9th of February, 1867.

'Regarding the aforementioned, a report was made to His Holiness, our Lord Pope Pius IX, by the undersigned Secretary. His Holiness, having considered the judgment of the Sacred Congregation, was pleased to ratify and confirm it.' On the 14th of the same month and year.

C. Episc. Portuen. et s. Rufinae

Cardinal PATRIZI

S. R. C.

Prefect.

S. D. BARTOLINI

S. R. C.

Secretary.

[*Latin ed. p. 484*]

FROM THE HOLY CONGREGATION FOR ECCLESIASTICAL IMMUNITY. AGREEMENT CONTRACT OF EMPHYTEUSIS. Dated May 29, 1838. Summary of the case. In Bologna, in Italy, there exists a certain parish church, which is surrounded by a large portico, and which was in the possession of a certain Religious Order. Above this same portico, certain dwellings were built by the Religious, for their own use, attached to the exterior walls of the aforementioned parish church, and which communicated with it. These Religious, having this communication interrupted, subsequently rented these dwellings to a lay family; after the suppression of the Religious Orders, these dwellings became the property of the Holy Roman Camera [the papal treasury]. However, when the lease contract ceased due to the death of the lessee, someone came forward who desired to acquire these dwellings, and he acquired them through a

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contract of emphyteusis, with the customary conditions being observed. Knowing all of this, the parish priest of the same church presented a complaint to the Holy Congregation for Ecclesiastical Immunity, requesting that such a contract be prevented and rescinded, since, for other reasons, and especially because the place was immune, which should be considered as part of the parish church; therefore, it could not become the possession of a lay family, which, by that very privilege of immunity or the right of asylum, would have been sheltered in that place, and such a dwelling would have been a disgrace to the parish church. After hearing all those who were interested, the question, after a long account of the facts, was proposed under a doubt which remains unresolved. Synopsis of the discussion. Various examples were cited from official sources, which declared that the atria or porticos of several temples had been private, enjoying the privilege of immunity or the right of asylum; thus, in one [Montis Virginis, I De-].

[*Latin ed. p. 485*]

STIPULATION REGARDING THE CONTRACT OF EMPHYTEUSIS. 485 "In December of 1697, the privilege of immunity was removed from a certain area adjacent to a temple. In Naples, on August 19, 1704, the privilege of immunity was removed from a certain building through which access was gained to the church of the Most Holy Rosary, so that it would not serve as a refuge for evildoers. In Forlì, on May 26, 1972, according to the vote of the Bishop, the privilege of immunity was restricted to the immediate vicinity of churches, excluding porticoes, and a stone was placed with an inscription indicating that it did not enjoy immunity. In Laurelana, on December 17, 1803, certain external areas adjacent to the temple were likewise deprived of immunity. Also, in Fabriano, on January 10, 1818. In Tibur, on January 10, 1795, concerning a wall of a hospital that connected to the church, it was decreed that, once the connections were closed, the aforementioned area would no longer enjoy immunity, according to the vote of the Bishop, made known verbally to the Most Holy [Father], and a stone would be placed. In Ferrara, on November 27, 1784, the immunity of the Oratory of St. Crispin was defined so that it should not extend beyond the first step that immediately adjoins the Oratory, and a stone was placed. Thus, for reasons of time and place, external areas adjacent to churches were deprived of immunity. But in the present case, the very portico of the parish church in question was declared to be without the privilege of asylum by a Decree of the Holy Congregation of Immunity; for in Bologna, on November 17, 1784, in Lib. 5, Litt., fol. 104, at the request of the Archbishop, since there were many temples in that city adorned with porticoes, and therefore it would be too easy for evildoers to seek refuge in them and enjoy the privilege of asylum, the Holy Congregation, after considering the requests of the Archbishop, decreed

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that, with the exception of the temples themselves, all porticoes should be deprived of immunity, with stones placed to indicate this deprivation. To this, the Archbishop of Bologna adds the resolutions indicated by Ferraris, Bibliotheca Canonica, under the word "Immunitas," article 2, number 52, where it is written: "A house contiguous to a church from which no access leads to the church, and which is occupied by laypersons, does not enjoy immunity." The same Holy Congregation, in Marsicilia, on June 16, 1682, in lib. 3, Decret. Altov., page 51, and in Pisaura, on July 16, 1686, ibid., page 584, decreed: "A house built above the sacristy of a confraternity, occupied by laypersons, does not enjoy immunity...."

[*Latin ed. p. 486*]

486. ON THE VALIDITY OF AGREEMENTS CONCERNING EMPTEUTIC LEASES. Having considered these matters, the purpose is to resolve the doubt: "Whether an agreement concerning an emphyteutic lease is valid, etc., in this case." RESOLUTION. The Holy Congregation of Immunity, after deliberation on May 29, 1838, judged that a house, which does not enjoy immunity, should be considered to enjoy it if a stone is placed upon it. FROM THIS, IT IS UNDERSTOOD: I. Buildings which are contiguous to sacred temples and constitute their external ornamentation, and which are connected to them, enjoy ecclesiastical immunity, according to the sacred canons (1). II. The Holy See, considering the circumstances of time and place, repeatedly maintains the same ecclesiastical immunity for these external buildings (1). In canon 17, question 4, it is stated: "As it was established by the holy Fathers from ancient times, we decree that the larger church should have a circumference of forty paces; chapels, or smaller churches, should have thirty. Whoever attempts to violate the boundaries of these, or steals a person or his goods from within them, shall be considered a public thief, until he makes amends, and if he does not return what he has stolen, he shall be excommunicated." In the canon that follows, it is written: "If anyone commits a fight or commits murder in the atrium of the church, whatever is necessary to be made amends for the violation of immunity shall be paid to the altar, whatever altar it may be." This ecclesiastical discipline, which is a certain extension of the immunity due to the temples of God, which is known among almost all nations, received confirmation from civil law, at the time when civil authority did not neglect its duties towards persons and ecclesiastical things. Therefore, the Emperors Theodosius and Valentinian, in Leg. P. C. de His qui ad ecclesias, decreed: "We decree that the temples of the highest God should be open to those who fear Him; not only the altars and the oratory of the temple, but also the area surrounding the church, which is enclosed by a four-sided wall, should be a refuge for those seeking protection; but if there is anything further, up to the outermost doors of the church, which the people first enter when going to prayer, we decree that

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it should be a refuge, so that whatever is between the temple that we have described, enclosed by a wall, and the public areas, and the main doors of the church, whether it be in cells, or in houses, gardens, baths, courtyards, and porticoes, should protect those who seek refuge within the temple." So that such a constitution does not seem to be a mere grant made by Christian princes to the Church, it should be remembered that Paul, the ethnic jurist, stated in Book 1, section 48 ff., on the recovery of property: "What belongs to religious institutions is religious, and therefore, stones built into them cannot be claimed after they have been removed." What would such a jurist say, if...

[*Latin ed. p. 487*]

THE CONTRACT OF EMPHYTEUSIS. 487. To take away places belonging to temples, while the immunity remains within the boundaries of the temple (1). III. Not to enjoy immunity, those external buildings, which, although they may seem to be located within the area of immunity, yet, being without communication with the temple, are let to laymen. How could [he] now live, and boast of the Christian name, when he witnessed so many arbitrary decisions, and heard so many vanities spoken concerning things dedicated to divine worship? (i) See Appendix XIV, in which a most excellent letter is presented, in which the celebrated Alexander Sperelli, Bishop of Eugubinus, defended the immunity of the temple.

[*Latin ed. p. 488*]

488 APPENDIX XIV. A DISTINGUISHED LETTER, WRITTEN BY THE CELEBRATED EUGUBINE TO THE MOST SERENE CAESAR ALEXANDER SPERELLI, BISHOP OF ESTE, GOVERNING MUTINAE, IN DEFENSE OF ECCLESIASTICAL IMMUNITY.

On account of the matters which the Prefect cited, as noted in page 486, we have seen that he did not wish to omit anything in declaring the excommunication, which Bishop Alexander ought to have declared, and the cause for which they had violated ecclesiastical immunity.

But neither the Prefect nor his ministers, who were repeatedly summoned and warned, appeared in the court. Therefore, Bishop Sperelli, in the middle of the seventeenth century, who flourished in those days, brought forth a certain declaration, and, according to the celebrated jurisprudence, especially in that part which concerns ecclesiastical immunity, he issued a sentence condemning them to excommunication, but he considered whether the judge or Prefect, having been suspended from office, might have fallen into desuetude; decisions of the ecclesiastical forum extensively discuss this matter.

The following happened: Certain orphans, after the death of their parents, sought refuge in the ecclesiastical court in order to obtain their inheritance. The Prefect, once and again, instituted a suit in the ecclesiastical

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court, condemning the secular officials as guilty of having removed a person from the church, whom he asserted was a traitor.

Such a sentence, issued by itself and without the privilege of asylum, was declared void. However, since the offense appeared to be rather a dispute, and the Bishop, when writing to the Prefect, had no other recourse, he refused the extraction. But the Prefect, having taken refuge with the Caesar, who, with his own authority, ordered him to be taken out, ordered him to be publicly imprisoned, subjected him to a rigorous examination, and finally condemned him to death.

Having become certain of these things, the Bishop did not relent in his pleas to the Caesar, saying, "Most Serene Prince, I received the letters of Your Celestic Majesty yesterday, and, as was fitting, I read them with due reverence; I perceived that I had offended you, because I declared the Prefect of Castelnuovo excommunicated for having violated the Church's immunity; I maintain that I am justified in doing so, according to the law of the Church."

[*Latin ed. p. 489*]

xiv. 4. "Mea, et tuae, consuluit, priusquam tantum nota pietas tua, et rei gestae series adoriretur facinus?" Ergo, Iudex? Me tamen et innocentia diversis a Praetore obnubilata spe, ego personam exuere, et litigatoris actibus, ac mendaciorum obumbrata larvarn induere debui? Ergo, inucaligine. Liceat mihi Christiana stis, violentisque laicorum facilio- eloqui libertate: hac infelicitate ver- Principum aulae laborant, ut nun- quam veritas simplici cultu ad e o- rum pertingat vestibulum, sed semper fucata, variisque involuta fal- laces, scenico apparatu quasi mima compareat. Atque, Princeps, ira per- cito, ac mendaciis tentato, ad te pla- gatum ac verius instructum provoco. Ergo, Principis terreni servus de facto Dei iura violabit, per ipsius vero Numinis ministro illa contrario facto tueri non licebit? Segnior erit iste in proprio munere obeundo, quam ille in suo subver- tendo? Ergo, iurisdictionem, i- munitatemque Ecclesiae arbitrio consiliariorum tuorum committere debui? Quid si illi Praetoris factum approbassent? Quid si ab aris sacris ad carceres violenter ctere, et traxerant; meumque Cancellarium Quid si reus interea nomine illum conspectu Quod reposcentem contumeliose summis riali diademate meo moras ne- verba dare studuissent? tormento, et e suo sic damno irreparabili admo- tus fuisset? Quid si eius affines apud Sum- Potestatibus impecoruscantibus non mum Catholicae Ecclesiae Antisti- tem de me conquesti fuissent? Quid permittitur, ille impia temeritate attentavit, perfecit: iussus essem? Quid denique (quod imo iudicia pervertit: humana divinam exitiali formidolosis est) respondendum vilipendio contempsit, Deum gra- vissime offendit, Ecclesiae iurisdi- ctionem usurpavit, templi Maiestatem laesit; me, Dei locum hac in parte, licet immeritum, gerentem, populo universo scandalum maximum praebuit. Quid sus ego in religiose est iura,

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et tutus erit; ego hac pressura constitutus agere po- iuribus sum teram Serenissime Princeps? Te, in- obsecutus, et plecti quis, certiorem facere, ad tuam cel- situdinem, iustitiae complementum recepturus, recursum habere. Cur iiion potius ille oraculum Serenitate Acta, tom. 1 1, fase. XX

[*Latin ed. p. 490*]

4-90 APPENDIX XIV. "He bears the burdens, and I undertake the protection of the sacred things; you have done this for me. Indeed, I might almost say that he, who, by a political law, is to be punished, is the one who injures the very essence of the divine. For God, in His Majesty, is offended in the Churches, and I, by divine right, am to be tormented; both divine and human laws are arrayed against him, and he flees, as it were, from me, and the punishment is inflicted upon him which is due to the guilty. What does the Praetor say? 'Vengeance is God Himself, for the violation of sacred immunity; He, who from the heavens scourged Heliodorus, the invader of the treasury, severely; he, who, having abused the power entrusted to him by you, dared to insinuate to the Prelates, as if you, who ought to perform the angelic office in the cities, were not worthy of it, and who, fearing no stain upon your most excellent reputation, dared to commit such sacrilege.' The sacred are thrice twenty-four. 'The Princes of the heavenly court, obedient to your will, do not hesitate to strike with rods those who, not fearing to extract money from men, despoil the treasures dedicated to religion, and thus demonstrate the most pious zeal, the free exercise of ecclesiastical authority, and the most abundant blessings.' Eutropius, a witness of the just judgment of God! 'Just as others, while striving to undermine ecclesiastical immunity, prepare for their own most unfortunate catastrophe, so it is with you; for if this immunity is seen to be free, it belongs to the divine order; the treasure of the Church, which protects the honor of the Church, will be preserved if it is free from all hindrance; God is offended when His worshiper is driven out of the atrium; the religion is violated when the suppliants are driven away from the altars; the honor of Christ is defiled when refuge is denied to those who seek it.' Truly, Judas is worse, who, not within the confines of the garden, but within the very walls of the sacred building, even upon His throne, dared to betray Christ, saying, 'One of the least of My brethren.' Nicephorus, lib. 13, 4. 'And indeed, what is more wicked, what more abominable, than to deny to the true and eternal Temple the veneration which the barbarians most zealously offer to their inanimate idols?' It is less deplorable than among the Gentiles.

[*Latin ed. p. 491*]

AP PENI 491 st xiv. It has been; and I say it, even to the uncultured; that it is forbidden to the ministers of God, and to those who, even by nature, are like dogs, who, pursuing the hare of venery, are present. The Prefect, overflowing with arrogance, taught him this. "He," that is, the Prefect, was

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led by a wicked and rash impulse; Anselm, Archbishop of Canterbury, debated with him, "that he had seen," namely, that they had seen, "him, having taken refuge in immunity," that is, in the protection afforded by his office, "but the dogs, not daring to violate him, but immediately attacking him, and touching him with their teeth, were unable to harm him, because he was a man devoted to religion. Therefore, the Prefect ought to have been punished, who treated him piously; who did not heed paternal warnings, ought to have been corrected; the crime of those men was exposed to the view of all, to be condemned, and to appease the Divine wrath. The crime is ratified, who does not punish the author of the crime, who does not pursue the wicked, approves of wickedness, who delights in expiating it; many are invited to commit crimes by those who grant forgiveness for crimes; it is an injury to God who does not avenge the injury to God; he is to be praised, on the contrary, he is not to be degraded, who is zealous for the glory of God, or at least, he is to be commended who faithfully fulfills his ministry, even though they may twist and turn; let those who do such things be condemned for their perfidy. To your Eminence, if anyone has struck, I have not published it; I have not performed the office of censuring, because I could not overlook such wickedness, nor restrain it, but rather, I could not bind it. What then is the sign of absolution? It is wonderful that we, the servants of the King of Kings, should deny the sacred power of his court, and that we should drive away from the Church those bound by the bonds of our military service. Alexander, while I was silent and hesitant, cried out, "that the Prefect had been expelled from the Church," and that it was forbidden to the Prefect, and to men, to grant absolution.

[*Latin ed. p. 492*]

492. Having neglected my duties, I transfer you to a people where you will be doubly burdened. I have laid a heavy burden upon Saul, for I allowed him, who despised the legion, to stain his diadem, and I denied him that which David offered for his glory, and which I offered for the salvation of my soul. I also transfer you, and your descendants, to a place where, as I hope, the Divine Prince will not be angered, but rather may your devotion to God be pleasing to Him; may your good works and piety, as the Lord commands, render to Caesar what is Caesar's, and to God what is God's; may this devotion endure for many ages. In the meantime, I accumulate [goods], and I humbly revere your generosity; I pray that you may not deem me worthy of reproach, but rather approve of me, just as you have humanely received me, and as is your custom, with kindness. Therefore, Saint Leo the Great, in his letter to Emperor Leo I, testified without hesitation to this very thing; he wrote to you, but I urge you to consider Somãa, not only to defend the laws, but also to preserve the royal dignity which has been most greatly entrusted to you, so that the Church may be most esteemed in the world. Thus far, the Bishop of Espera, Eugubinus. But who is the best

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and most excellent Prince, whom God has appointed? He is the one who restores true peace to those who are imprisoned. I have decreed that this letter should be read in the decisions of the Council of Spera, number 105, paragraph 9. He is the one who grants kingdoms, God who grants them with generosity.

[*Latin ed. p. 493*]

APPENDIX XV. CONCERNING THE CLAUSE IN THE PAPAL PENITENTIAL DECREES, OR REGARDING THE PHRASE: "With prior absolution from ecclesiastical censures and penalties, incurred in any way by the aforementioned, and from all real incestuous acts, with salutary and grave penance."

Such a clause is used by St. Pius in *De Libero Arbitrio*, book 7, chapter 1, paragraphs 37 and 38, and by Benedict XIV in *Institutiones Juris Canonici*, title 8, chapter 1, paragraph 13, concerning the granting of matrimonial dispensations to the poor, and it undoubtedly imposes an obligation in external matters, when incest occurs between betrothed persons.

Although the Commissary or legate who issues the rescript clearly declares that he does not grant any dispensation, for he is bound to follow the instructions concerning the clauses; it is sufficient that he accurately commands their execution, under pain of deception or fraud; they must, however, inquire into the reasons, not merely to explain them if they are more easily understood, but also to lead to them; which we do in this Appendix.

Four parts are contained in the aforementioned clause: 1. absolution from censures; 2. absolution from penalties; 3. absolution from ecclesiastical punishments; 4. the imposition of salutary and grave penance for real incestuous acts.

Beginning with the third part, namely, the absolution from ecclesiastical punishments, it is known that Pope Innocent XII, and also Pope Benedict XIV, have provided a remedy for those who have obtained a dispensation through the Apostolic Penitentiary, concerning the concealment of the marriage between them, so that they may not be able to reveal the incestuous acts without detriment to their honor. The Holy See imposed this obligation on the incestuous, so that, as is stated in *Sauchez de Matrim.*, book 8, chapter 2, paragraph 1, the greater penitentiary may, in these cases, more easily grant the dispensation, or, rather, revalidate it, so that they may abstain from such acts, and, through prayer, may more easily avoid the crime. The reason for this is given, so that they may more easily abstain from such acts, and, through prayer, may more easily avoid the crime.

Furthermore, the obligation is imposed by the Holy See in matrimonial dispensations. Pirrus Corrado, in *Praxi Dispens.*, explains that the abso-

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lution from incestuous acts... (The passage is incomplete).

[*Latin ed. p. 494*]

494 APPENDIX: These words, "x v. from such incest," (absolution) do not seem to have been reserved to anyone, and Gregory demonstrated this in the notes he made in the work of Father Theasaurus, "De poenis ecclesiasticis," in the notation under n. 3, chapter. I said "Dixit." Concerning those who have attempted incestuous marriages without an Apostolic dispensation, in part 2, section 1, because a simple incest cannot be dispensed with without an Apostolic dispensation, unless they have first been absolved from the incest, therefore, the style is such that in the petition, absolution is requested, and in the letters of dispensation, it is stated. These (who, out of reverence for divine law) bind their hands, and thus, through the signature of the petition, the Pope wished to draw all matters to himself, to bind the hands of the inferiors, and to prevent them from acting. It would be inconvenient if the absolution of those in the religious orders, before the constitution or with the constitution, could not be obtained by the Bishop or another inferior, lest the danger of affinity, which is reserved to the Pope by these canonical grades, should be avoided; nor should monks and clerics who contract marriage against the established laws, or who, after obtaining dispensation from the Pope, which, as a necessary antecedent to the sentence, draws the absolution to itself, be subjected to excommunication. Therefore, we decree that those who are sent to the churches, or who announce to them, or who are announced by their subordinates, until their hands are bound, should recognize their error and be absolved. This excellent doctrine explains many things. Concerning the first part of the clause, which pertains to those who wish to obtain absolution, it is certain that, with respect to other penalties, no one is exempt from the censures, except for simple incest, which, according to common law, does not carry a censure reserved to the Holy See.

Therefore, since the Holy See, through clause (1), expedites this, it is fitting to add the dispositive part of the Constitution of Gregory XIV, which Constitution is not found inserted in the Bullarium. Thus, the Supreme Pontiff, remembering the evils derived from incestuous unions, which offend God and men,

[*Latin ed. p. 495*]

APPENDI 495 xv. concerning what we are discussing, the power is granted from a to b - to communicate the sentence according to the first degree, so that, for example, incest is a censure imposed by the censors, which are understood, and are perhaps found to be those inflicted in the catalogue of reserved cases in the dioceses of incest, namely, the case of *casus*, which is recorded: and this case has a place among the reserved cases even in the Neapolitan Archdiocese, as is known to diocesan officials.

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In many places, at least some cases are reserved with excommunication, as Alphonse de Liguori relates in his moral theology. Therefore, the Holy Penitentiary can, according to what is prescribed, demand that absolution from the aforementioned censures be sent. For, as I said above, dioceses, according to the doctrine of Corrado, c. XIV, 5 n., this case is reserved to the Synodus. In many reserved cases, a dispensation must be granted beforehand. Concerning those abominable acts, and the penalties imposed by the Council of Vienne on those who presumptuously enter into marriages of this kind, knowing the danger to their souls, it prescribed: "By a *motu proprio*, and from our certain knowledge, we declare that all and each of the penalties and censures against incestuous persons, previously promulgated in any way, are hereby renewed; and by this irrefragable declaration, we announce to all that henceforth, concerning those of the first, or second degree of consanguinity or affinity, even mixed impediments, with any persons, nor in cases where carnal union is entered into with the hope, or without the hope of obtaining a dispensation, even with offspring, or defamation of the union; nor in cases entered into temporarily, even for scandal or enmity, or for any other pretext; nor even when the aforementioned circumstances cease, except with those for whom the Council of Trent permitted marriages of this kind, we intend in no way to grant dispensations; but we wish to completely exclude all similar dispensations from our jurisdiction, and we completely remove all hope of obtaining them in any way."

Furthermore, so that our intention may be more easily brought to effect and made known to all, we command and order, through the power of holy obedience, all Local Ordinaries established throughout the Christian world, as well as in the provinces and kingdoms, that as soon as they can, they present these letters, or a transcript thereof, which we also wish to be faithfully rendered, with the public seal of a notary and the seal of someone in an ecclesiastical dignity, to the originals of these letters; that they be publicly proclaimed and explained in all cathedrals and parochial churches of their cities and dioceses, even in the vernacular; and that they be affixed to the doors of those churches; and that against such incestuous persons, whether men or women, of whatever status, degree, dignity, order, and condition, they proceed according to the decrees of the sacred canons; that they declare them excommunicated, as such, and separated from the Body of Christ and the unity of the Church of God, and that they be prohibited from entering the churches, and severely punished, and that the marriages entered into by them be annulled and declared invalid; and that they be separated from each other, so that at least in form, and through perpetual infamy, they may abstain from such heinous incestuous acts.

Given at Rome, at St. Peter's, in the year of the Incarnation of the Lord,

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one thousand five hundred and ninety, in the first year of our pontificate.

[*Latin ed. p. 496*]

496 APPI-IN m x xv. Let there be absolution from the crimes of incest, and let it not be granted to those who, through worldly riches, are unwilling to do good, according to the laws. Therefore, those who, through these very things, are brought before the judgment, are not only condemned, but are also considered infamous, unless that very fault is first absolved; otherwise, they are called *maledicti*. Secular laws call such people infamous, if, as a consequence of their wealth, they are led to seek dispensation from the Pope concerning crimes of incest, and they are repelled. We also note that these, following the true meaning of infamy, are considered infamous, because they are stained with the stains of infamy; and, perhaps, according to diocesan law, they are not subject to censure, nor are their accusations (which secular laws reject) received. Therefore, it is fitting that, in the first part of this decree, absolution should precede any censure. Finally, in the fourth part of the decree, a grave and salutary penance is imposed, the reason for which is clear to everyone. Such penalties are enumerated by P. Theasurus in his work *De poenis ecclesiasticis*, part 2, chapter 2, paragraph 49, 1, who, together with Corrado in the treatise *De incestuosis nuptiis*, number 13, and H 4, teaches that a greater penance should be imposed. Canon 35, question 2, which speaks of incestuous unions, adds: "Therefore, the Penitentiary mandates that the incestuous incur infamy." Callixtus and salutary it must be, as the Pope has decreed in this canon: "Conjuges consanguineorum." Romanus. And why? Because these things are done to bring about the Divine purpose, as Marcus Leo, in the aforementioned place, numbers 53 and 5, state.

[*Latin ed. p. 497*]

497 FROM THE CONGREGATION OF THE COUNCIL. CONCERNING THE MAINTENANCE OR REINTEGRATION. March 3, 1860, January 27, and December 22, 1866. Session 21, chapter 4, concerning rights. This celebrated cause, which concerns parochial rights and involves a long series of events, greatly complicated by the acrimony of the parties, has grown to such an extent that all the documents, whether detailed or summaries, which have been printed, amount to a large number of pages, approximately 540. Therefore, only those documents which shed light on the state of the matter will be considered. Summary of the facts. In the town of Tarcento, belonging to the Archdiocese of Udine, there has existed, from time immemorial, a large parish, which was united by Adrian VI to the Metropolitan Chapter, whose territory included six dependent churches, the care of which was entrusted to several assistant chaplains, along with the parish priest. At the beginning of the 15th century, the parishioners of three villages, named Seguacco, Villafrida, and Collisalli, which we will

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call A, B, and C for brevity, desired to have a priest who would reside permanently in the church of village A, and who would be chosen not by the parish priest, as was the custom, but by themselves. The matter was brought before the authorities, and the General Vicar named Guarnerius, personally inspected the distance between the parish and village A in 1446, and issued the following judgment: 1° That the people of villages A, B, and C may and can choose a priest who will serve them, and that this be confirmed by the aforementioned parish priest, or by the Reverend Vicar B. D. ... 2° That the aforementioned priest, residing in village A, shall be obligated to attend the aforementioned parish (or parochial church) and to celebrate there with the other vicars in the feasts of the Purification of the Blessed Virgin, etc. 3° That the Acts, volume II, page XXI, 33.

[*Latin ed. p. 498*]

498. CONCERNING MAINTENANCE OR REINTEGRATION. During the feasts of Saint Michael and Saint Euphemia, the two vicars residing in Torcento may celebrate in the churches of Saint Euphemia and Saint Michael in Segnacco (parish A), and they shall equally receive a portion of the offerings made on those days before the altars. 4° The aforementioned priest shall be obligated to celebrate in the parish of Torcento on two Sundays in each month, in whichever of the aforementioned churches in Segnacco a baptismal font is established, which shall remain permanently located there, and to administer the Body of Christ and Extreme Unction, so that those who cannot receive Baptism except in cases of necessity may do so. 5° The aforementioned priest shall receive from the "Quartesi" (certain tithes which are called by that name in that place) of the aforementioned parish, namely, three measures of wheat, wine, etc., and he shall be obligated to acknowledge the parish of Torcento as his own. 6° The aforementioned communities A, B, and C shall be obligated to provide to the aforementioned priest, for his sustenance, only what is sufficient for him to live honorably, and they shall not be able to trouble the aforementioned parish priest, nor his successors, in any way, according to the aforementioned stipulations. Finally, as a sign of filial obedience, the aforementioned priest shall be obligated to present to the parish priest of Torcento one candle weighing two pounds each year.

This judgment, having been finalized, was confirmed in its entirety by Nicholas V on the 5th of May, 1447 (who had been informed, due to the distance of the places, that some of the inhabitants of the aforementioned parishes had died without the Sacrament of Confession, and some of their children without Baptism, due to obstacles caused by distance, rain, snow, glaciers, and storms). After these events, many acts of jurisdiction, decrees, and controversies intervened, which will be discussed in a concise summary; but it is necessary to mention a certain judgment issued on January 22, 1741, by a secular tribunal. For the parishioners of the three parishes

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petitioned the secular tribunal: 1° that it be defined that the church of Saint Michael is a true ecclesiastical benefice, existing independently and distinct from the parish of Torcento; 2° that the right or possession of choosing their own priest be preserved for them, so that the priest elected by them would, by canonical institution, acquire the title of pastor; 3° that in the same benefice, there should be only one rector, namely, a priest chosen by them, who, by canonical institution, would freely administer the sacraments, and that the same parishioners...

[*Latin ed. p. 499*]

MANUTENTIONIS, sive REINTEGRATIONIS. 490 Sacramenta, etc., debebant administrari, sed cum iuribus bonorum, favente Plebaniae Tarcenti, etc. Tribunal laicum, audito Capitulo Utinensi, quod tribus petitionibus resistit, sententiam emisit, supplicantibus adversam: et deinde Officialis civilis eandem sententiam executioni mandavit, praescribens simul methodum et normam ad praecidendas in posterum iamdiu agitatas controversias, quae norma officia et iura determinabat tum Plebano, tum Sacerdoti cappellano. Denique Ordinarius die 12 Iunii anni 1857 animadvertens, a quadringentis abhinc annis gravem vigere quaestionem inter utramque ecclesiam, quod Plebanus contenderet sibi competere plenam curam animarum non solum in Plebania Tarcenti, sed etiam in tribus pagis, ita ut eorum Sacerdos habendus esset ut simplex Plebani delegatus: e contrario parochiani eorumdem pagorum sustinerent parochialitatem ecclesiae s. Euphemiae; ad removendam controversiarum causam, expetito suffragio proborum virorum, peculiari consultatione habita, omnibusque perpensis, controversiam summaria methodo definire iudicavit, sequenti emisso decreto: I. Ecclesiam s. Euphemiae pagi A. esse Vicariam perpetuam, ideoque Rectorem eiusdem exercere curam animarum in tribus pagis vi sui tituli iurisdictione propria, non autem delegata (1): ideoque ad eundem Rectorem excluso Plebano pertinere administrationem sacramentorum, etc., eumdemque posse Plebano excluso testimoniales litteras dare super moribus, nativitate, matrimoniis, morte eorumdem parochianorum, et stolae ius habere intra ambitum trium pagorum. II. E contra Plebanum Tarcenti esse Parochum primitivum; ad eundem propterea pertinere ius Quartesii, seu decimarum in integro territorio trium pagorum, iuxta, etc. III. Ecclesiam pagi A. signa honoris erga ecclesiam matricem Plebani exhibere debere: quae autem essent signa honoris, sex articulis Ordinarius determinavit. Duobus elapsis mensibus cum dimidio ab eo decreto edito, Plebanus Tarcenti ab Ordinario petiit, ut decretum ipsum supremae potestati ecclesiasticae exhiberetur; cumque negativum habuisset responsum, quod utile tempus ad appellandi. Vide

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annotationem 3 in Folium I, pag. 673.

[*Latin ed. p. 500*]

500. MAINTENANCE OR RESTORATION. Since a considerable time had elapsed, the supplicant sent a letter to the Most Reverend Lord, in which he requested that, after the revocation of the decree, a decision be made in his favor regarding maintenance, and, if necessary, restoration to quasi-possession of all parochial rights over the filial church of the three villages. After hearing the Archbishop's report, the matter was presented under a doubt, as follows. A synopsis of the arguments. THOSE ARGUMENTS PRESENTED BY THE CURIA IN DEFENSE OF THE DECREE. The Curia observed that it had determined the nature of the benefice of Saint Euphemia through that decree, in order to resolve controversies, having before its eyes authentic documents, and first of all, the opinion of Guarnieri from the year 1446, confirmed by Nicholas V, of which we have already made mention. Indeed, not long after, in the year 1455, a certain controversy arose which was settled by an Arbitration, in which it was deemed worthy of note that a priest was instituted and appointed in those villages, so that he might "at any time, and as often as" it should be opportune, administer to the inhabitants all ecclesiastical sacraments, so that they would not, at any time of the year, be obliged to go to the church and parish of Saint Peter of Tarcento for the reception of them. Documents that followed that time showed that the church of Saint Euphemia of Segnacco, or the village of A., had been granted as a curacy: that is, it had been granted to a priest with canonical institution, with all the solemnities observed; this could be deduced from the letters of institution for almost two centuries: finally, the Rector of that same village had not only administered baptism and the other sacraments in his church, but also, after the decrees of the Council of Trent, had possessed ordinary power to celebrate marriages contracted by his parishioners. Furthermore, a brief history of subsequent events was recounted, which showed that disputes and controversies had often arisen over one or another head of jurisdiction, sometimes in a possessory matter, sometimes in a petitionary matter; also, over the name by which the church was called, sometimes as a parochial church, sometimes as a curacy within the parish of Tarcento; finally, the present question was brought before the civil government by the parishioners of the three villages, when the parish was vacant.

[*Latin ed. p. 501*]

CONCERNING THE MAINTENANCE OR REINTEGRATION. 501. Finally, the matter was referred to the Court of Udine, so that the controversy might be resolved. However, since it appeared that both sides had exceeded the bounds of propriety, and since the possessory judgment was combined with a petition, the Court affirmed that the nature of the benefice

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had been definitively determined. The nature of a benefice, according to canonical doctrine, consists in: 1° a spiritual office; 2° a perpetual right to receive revenues; 3° ecclesiastical authority, which admits of, assigns, and confirms the office and the assignment of revenues. All these elements, according to the opinion of Guarnerius, are found in the Vicariate in question. Furthermore, since in the most ancient canonical documents, the term "Beneficium" is used, and the full care, governance, administration of this [entity] is completely entrusted to the priest; since for almost two centuries, until the year 1745, it was called a parish and treated as such in public acts; since throughout that entire period of time, there was no indication of any delegation of authority, and the priest of the parish A. administered baptism and other sacraments, and assisted at marriages; since the preceding Archbishop, writing to the Government in the year 1840, testified that the parish possessed all the characteristics of a parochial benefice; and from this, the aforementioned conclusion was drawn; that is, that the aforementioned church should be considered a curatial benefice. On the contrary, since in the aforementioned ancient opinion of the Vicar General, it clearly appears that the priest of the parish A. is called a Vicar; since he is instructed to know the people of Tarcento as his flock; since, therefore, certain honorary rights are granted to him; since the collection of tithes throughout the territory of the three parishes is reserved to the Rector; since in more recent canonical documents, that benefice is called the parish of Tarcento: it follows that the church of St. Euphemia is not a parochial church, but a perpetual Vicariate, and should be so called by law. Thus, the nature of the benefice having been definitively determined, it was easy to deduce the rights and offices that belonged to the perpetual Vicar, and to the original parish priest and his parish church, and, according to the doctrine of canonists, to determine and distribute them accordingly.

[*Latin ed. p. 502*]

5 0 ! 2 CONCERNING MAINTENANCE OR REINTEGRATION. It had indeed been declared void by the civil judgment of the year 1741 and the civil ordinance concerning the minister; but, as the Court rightly noted, such judgments, and all other political ordinances, have no value; firstly, because they were issued by an incompetent authority, since it does not pertain to civil authority to enact laws concerning the administration of the sacraments and parochial functions, which are entirely and purely ecclesiastical matters; secondly, because those dispositions are contrary to the nature of the benefice of the curate of St. Euphemia, as is evident from what has been said. After these points, the Court rejected what was presented to it by the part of the Pleban.

THOSE THINGS PRESENTED FROM THE PART OF THE PLEBAN. — The Pleban of Causidi, who was present in the city, and who was to argue on his behalf, and who, with a large mass of documents, delayed the ques-

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tion of possession, sought to demonstrate that the Pleban was to be found in possession of the rights of patronage and parochial authority in three parishes; and therefore, he should be maintained in that possession; but since, by that archiepiscopal decree, he had been deprived of his possession, having neglected the solemnities of justice, he should be restored to that possession. Therefore, he raised a twofold question, namely, concerning the retention of possession, and concerning its restoration; which, in other words, is the question of maintenance and reintegration.

CONCERNING MAINTENANCE. — The advocate, beginning with the ancient Guarnerian judgment, argued that the rights of patronage and parochial authority had been preserved in favor of the Pleban, since in that judgment, it is indeed stipulated that a priest of three parishes should be chosen by the same parishioners, and should reside in the church of St. Euphemia; nevertheless, almost all the other rights remained intact; for, according to that judgment, the assistant chaplains were obligated to recognize the Pleban of Tarcenti as their superior: they themselves were to be confirmed by the Pleban: they could not use the font of baptism except in cases of necessity. To these, the advocate added several subsequent acts, by which the church of St. Euphemia was declared to be a filial church of the Pleban of Tarcenti; the Rectors were called officiating chaplains; he added acts by which possession was given to new Plebans; for, according to those acts, the Plebans were admitted into possession of all the filial churches without any distinction: there were also acts of funerals, baptisms, and marriages, which demonstrated the continuous possession of the Plebans.

[*Latin ed. p. 503*]

MAINTENANCE OR RESTORATION 503: The rights, both of matriculation and of parochial status, seemed to have been confirmed for five centuries: judicial acts, in which it had been repeatedly decreed that the Pleban of Tarcento should be maintained in possession of his prerogatives and rights of parochial status in all things. With these and other similar things accumulated in fact, it was concluded that the Pleban could not be removed from this possession by that extrajudicial decree, and therefore a Praetorian interdict should be imposed, which, according to the ancient Roman laws, is called "Uti possidetis": thus, Yoet writes in the Pandects, book 43, title 17, number 1: "Just as the interdict 'Unde vi' is for recovering lost possession, so this (interdict) 'Uti possidetis,' so called from the first words of the edict and the Praetorian interdict, is for maintaining possession so that it is not lost; it prohibits any act of force against the possessor, who neither possesses by force, nor secretly, nor precariously." This kind of interdict, or remedy, which the Praetor granted, to prevent force being used against one who possesses, is today the same as the mandate to maintain, as Portius de Manui states in observations, 3, number 17, where he writes: "Today, in the Rota and in the Roman Curia, the mandate to maintain is commonly the

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same as the possessory interdict 'Uti possidetis,' or 'Retinendae,' since the remedy by which one is maintained in possession is to maintain, and not to acquire or restore (possession)." This kind of remedy, although formerly granted to maintain possession of land, property, or a dwelling, as Voet says in the aforementioned passage, "this interdict has been extended by usage to jurisdiction, censuses, ecclesiastical benefices, public offices, and honors, and other similar things." This remedy for maintaining possession, the Advocate maintained, also applies to those who possess, whether by force, secretly, or precariously, from a third party, who is not in a lawsuit with them. Therefore, Voet, in the aforementioned passage, wrote: "This interdict belongs to him who possesses, or quasi-possesses, during a contested lawsuit, not by force, secretly, or precariously, from his adversary, even if from a third party, by force, secretly, and precariously, so that it makes little difference whether he possesses justly or unjustly, provided he proves these two things, possession on his part, and disturbance on the part of the adversary." The Defender concluded by citing the doctrine of the Holy Rota, which was expounded in the case of Rome, which was reduced to its original state on March 24, 1828.

[*Latin ed. p. 504*]

504 CONCERNING MAINTENANCE OR RESTORATION. In paragraph 13, it is written: "Since this judgment is possessory, therefore all its investigation is based on this one point, namely, whether the parties possess or do not possess the matter in question. And since it was most clearly established that the plaintiff possessed, a certain right arose for them to obtain maintenance, which is always granted to those who possess..." If we were dealing with a petitionary judgment, there would be no doubt that this long-standing possession would be sufficient to establish the plaintiff's good right, which would give them, as lawyers say, a better title in the eyes of the world; therefore, it would much more, indeed, abundantly, suffice to grant the plaintiff maintenance.

CONCERNING RESTORATION. Turning to the other part of the defense presented, the Defender, with a most copious argument, maintained that the plaintiff should be restored. For restoration is granted to him who has been ejected from his possession; he who should be maintained by the protection of good right, should all the more be restored; these two remedies, Maintenance and Restoration, can certainly be combined, as is observed in the Holy Rota's judgment in the case of Melevitana, April 21, 1817, before Odescalchi. The Defender argued that what ejected the plaintiff from his long-standing possession, if indeed he was ejected, was the extrajudicial decree of dismemberment of which we are speaking; but such a decree, whether considered in its intrinsic or extrinsic aspects, cannot subsist by its own force. For since dismemberment is a species of alienation, it should not be done except with solemnities and a just cause; therefore,

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one without the other is not sufficient. Dismemberment should be considered as the alienation of parishes, and therefore should only be permitted in cases of necessity and utility for the Church, as is observed in a certain case from Brixen, discussed on September 26, 1858, before the Sacred Congregation. The Defender further argued that a legitimate cause for dismemberment is the distance or difficulty of the location, whereby the parishioners cannot easily access the parochial church to receive the sacraments and hear the divine services, according to what is established in the Council of Trent, Session 21, Chapter 4. He demonstrated that such distance and difficulty of roads did not exist in our case; and although these inconveniences might exist in some cases, it should not lead to the most odious dismemberment.

[*Latin ed. p. 505*]

Regarding the maintenance or restoration [of a church]: The act of dismemberment [of a parish] is not permissible, provided that those parishes are sufficiently provided for by the priest residing there, with the assistance of the vicar, as Saint Rota has taught repeatedly, and as many authors, including Ferraris in *Dismembratio*, number 15, state: "However, dismemberment is not permitted," notwithstanding the aforementioned circumstances, whenever it is determined by the coadjutor, who is able to administer the sacraments, that a more convenient church is available to parishioners who are distant. Nor can questions that the Curia inquires about ever constitute a cause for dismemberment, for either these are matters of law, which have been definitively settled by numerous judicial sentences, which have become res judicata, and, as lawyers say, turn black into white, and white into black, that is, res judicata must be held as truth; or they are questions arising from animosity between individuals, and such questions cannot constitute a reason for violating the venerable custom, the res judicata, the Apostolic Letters. Indeed, if such animosity were present, the Advocate argued, that this aversion was not considered by that decree, since rumors were circulating. This is what the Defender argued most extensively regarding the internal aspects. Then, examining the decree regarding the external aspects, he maintained that it was invalid, because it was issued without citing those whose interests were involved. The vicar, as the rector of the church, was not cited, nor was the Chapter, as the patron. Indeed, this is known from the statute in chapter 1 of *De Reb. eccles., non alien*, number 6. When the Bishop of Dulma granted the tithes of a certain vacant parish to his archdeacon, with the consent of his Chapter, Innocent IV declared such a concession null and void, because it had been carried out without the proper formalities; for this reason, Innocent stated: "Because the aforementioned concession of this church (when it was vacant) lacked a defender, who should have been appointed to him beforehand by the same Bishop; because neither was the solemn and diligent process carried

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out that is required in such permanent concessions and alienation of ecclesiastical property; therefore, we declare that the aforementioned tithes, and the ordination and concession itself (especially since there was no evident necessity or utility for it to be done), are not valid, according to the counsel of our brothers; we return these tithes to that church as belonging to..."

[*Latin ed. p. 506*]

306 CONSERVATION OR REINTEGRATION. those who diligently seek to assign it definitively. "Also, the Council of Trent, Session 7 on Reform, canon 6, and Session 24, canon 15 on Reform, and with numerous other authorities, the Defender demonstrated that the citation of the Rector is necessary in the matter of dismemberment, as stated by Lotterius in *De Re Beneficiis*, book 1, question 28, number 1; and by the Sacred Rota, paragraph 7, decision 68, number 1 and following, recently; and in the case of Leodien, concerning dismemberment, on July 3, 1713, before Crispo; but in our case, it was not sufficient that the Ordinary had heard the parish priest and the chapter of the patron before the issuance of the decree; for they had not been cited, but had been heard extrajudicially. After these and other matters were extensively discussed, the purpose was to resolve the question: "Is there a place for conservation, or rather, reintegration, in this case?" RESOLUTION. – The Sacred Congregation, after discussing the case in its competent meetings on March 3, 1860, decided to respond affirmatively in all respects. CONTINUATION OF THE CASE. – This Resolution was communicated to the Ordinary so that, according to his judgment and conscience, he might order its execution. But the question arose again: for the parish priest, diligently seeking that the Resolution be enforced, offered new prayers to the Sacred Congregation; and when the Prefects of the communities of the region A learned of this, they protested against it, once and again, for these reasons: that they had not been consulted, and that they enjoyed the right of patronage. After persistent requests, on February 28, 1863, a decree was issued that the case be reopened before the Sacred Congregation, and this was notified to the Capitular Vicar, in order that, after hearing all those who were concerned, he might inform the Sacred Congregation of the results. Briefly, the heads of the three parishes were finally heard, and, along with their arguments, a most extensive report of the facts and the law was transmitted by the Ordinary; and after both sides had presented their arguments, the case was again brought up for discussion. The report of the Ordinary, or of the ecclesiastical fiscal, again demonstrated that the care of souls of the three parishes was a perpetual vicariate; this was demonstrated not only from the ancient and established opinion of Guarnerius, from which it can easily be deduced, but also from constant observation, which is established by the records of the ecclesiasti-

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cal court and other documents.

[*Latin ed. p. 507*]

MAINTENANCE OR RESTORATION. 507 had been, although particular and arbitrary actions had not always conformed to law and the "perpetual vicariate." Therefore, it did not concern the present case regarding the dismemberment of parishes, which could not have been done without due solemnities, although, if the parish had not been separated, it would have been necessary to separate it in order to quell disputes and seditions; but it concerned the determination of the rights of each parish, which flowed from the nature of the ancient dismemberment, or perpetual vicariate, so that an end might finally be put to matters that had lasted for four centuries. The defender of the perpetual vicariate argued that the present question could not be considered in a possessory action, as had been done in the previous instance, but must be considered in the manner in which it had begun, namely, in a petition, and that the first resolution could not be upheld, because not all those who were interested had been summoned and notified by the Rector. Therefore, the following question was proposed: "Whether it is necessary to adhere to or to depart from the decisions in this case." RESOLUTION. — The Holy Congregation, having been called for a complete examination on January 27, 1866, and after considering new arguments, decided: to depart from the previous decisions. A new hearing was obtained by the Rector's attorney, and the matter was again brought up for discussion regarding the question: whether it is necessary to adhere to the first or the second decision. The Holy Congregation, after again discussing the case on December 22, 1866, responded: to adhere to the second decision, and no further (1). FROM THESE, THE FOLLOWING MAY BE GATHERED. I. Questions concerning possession are of two kinds: either concerning the retention of possession, or concerning the recovery of possession (2). II. In legal language, he who has the right to retain possession is to be maintained; he who has the right to recover possession is to be restored. (1) The Rector's case was argued by the French lawyers Xaverius Gentili and Carolus Modesti; the Vicariate's case was argued by Salvator Pallottini, Advocate. (2) "Every controversy concerning possession pertains either to the restoration to us of what we do not possess: or to the permission to us to possess what we possess, L. 1. ff. Uti possidetis."

[*Latin ed. p. 508*]

508. CONCERNING MAINTENANCE OR RESTORATION. III. Questions concerning possession can be separated, and often should be, from questions concerning the legal title to possession; the former, according to the common way of speaking in legal proceedings, are considered first, and the latter, second. IV. The present question has been raised primarily in the context of possession, in which the matter of maintaining or restoring

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a long-standing possession is at issue. V. A judgment issued for the maintenance or restoration of possession can be annulled by a contrary judgment in a suit at law, especially if it is shown that even the long-standing possession was invalid, and has not acquired the force of prescription (1). VI. Finally, a perpetual vicariate is equated with a true benefice, for which nothing is lacking to be considered a perfect benefice, except the title, which is found elsewhere. (I) It often happens that a cause presented solely in a possessory action is decided in a suit at law; this occurs when the one who does not possess clearly and immediately presents the title by which he claims the right to possess. In this case, the jurists say that the possessory judgment is absorbed by the clear suit at law. This does not occur, as they themselves say, when the suit at law is "turbid," that is, when the title by which someone claims ownership of the thing, or a right against the possession of another, is complex and requires much investigation, as seems to have happened in the present case, in which the title of independence in the care of souls of three parishes from the jurisdiction of the parish priest was very complex, due to many things that have occurred over the centuries, and it did not seem sufficient for the Ordinary to issue an extrajudicial decree to overturn the apparent possession, or quasi-possession, of the parish priest, which seemed to have the force of prescription.

[*Latin ed. p. 509*]

509 CONCERNING ORATORIES WITH REGARD TO SACRED FUNCTIONS AND PAROCHIAL RIGHTS. January 27, 1866. Session 24, chapter 13, concerning the aforementioned matter. An image of the Blessed Virgin Mary was located within the regular temple, situated within the boundaries of the parish of A. This image was greatly venerated by the faithful and was renowned for the miracles wrought by God. From ancient times, on certain solemn days, the people, together with the parish priest, would offer public prayers and bring offerings, which were mostly alms intended for the celebration of Masses before the image. When the religious order was expelled from its monastery by the French invasion, and the temple was closed, a noble man, with the consent of the Archbishop, transferred the image to a public place which he owned within the same parish, so that it might be open to public veneration. Neither did the noble man cease to be the patron of the oratory, nor did the faithful cease to practice the aforementioned veneration; and the same patron, as previously the religious order, undertook the care of receiving the offerings and dispensing them. However, complaints were brought before the Archdiocesan Curia by the parish priest concerning the manner in which the sacred functions were performed in the oratory, and the manner in which the offerings of the faithful were received and dispensed. The parish priest contended that he was being opposed by the patron, in violation of the sacred canons, ecclesiastical discipline, and the statutes of the diocesan synod, and he requested

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the Archbishop to declare that: 1° he had the right to freely celebrate Mass in the aforementioned oratory, and to have everything necessary for its celebration; 2° he had the right to direct the sacred functions, specifically the public prayers; 3° he had the right to receive the offerings made at the aforementioned altar, and to render an account of them independently of the patron, both to the donors and to the Ordinary; 4° he had the right to receive a certain gold coin, commonly called a "doppia," on the occasion of feast days celebrated in the same oratory. Finally, he added that the oratory should be open to the faithful for public veneration. In order to determine the rights and to clarify the matter, after the vote of a certain canonist, the Archbishop, on April 17, 1852,

[*Latin ed. p. 510*]

510 CONCERNING CHAPELS WITH REGARD TO SACRED FUNCTIONS AND PAROCHIAL RIGHTS. He presented his opinion, by which he not only addressed the present question, but also other similar matters that might arise: he declared, firstly, that the mere fact that a chapel is located within the boundaries of a parish does not constitute a title by which the parish priest should consider himself subject; secondly, that public chapels under the patronage of laymen do not depend on the parish priest in non-parochial functions; nor can the parish priest demand that the patron provide him with everything required for ecclesiastical functions; thirdly, that the parish priest must be preferred to even a lay patron in receiving offerings from the faithful, etc., and that the patron must prove, based on ancient custom, that the intention of the donors was that not the patron, but the parish priest, should dispose of these offerings; if this is not proven, the patron, as administrator of the offerings, must render an account of them to the Ordinary; fourthly, that the parish priest cannot be compelled to be present at sacred functions in these public chapels; fifthly, nor, if invited to celebrate a sacred function on the occasion of a feast day, can he demand a sum of money, commonly called a "doppia," which, it was also said, was forbidden under severe penalties by the Most Holy Pope Urban VIII. Such a decision not only stirred the feelings of the parish priest who raised the question, but also of other parish priests. Hence arose new complaints, and also a pamphlet written about the rights of parish priests, which was tainted with Jansenist or Febronian errors. The question was then transmitted to the Most Holy Council, and, after receiving a comprehensive account of the matter from the new Archbishop, the question was presented under the doubts which are listed at the end. A synopsis of the discussion. WHAT ARGUMENTS WERE PRESENTED IN FAVOR OF THE PARISH PRIEST. — The parish priest, in defense of his rights, appointed a lawyer (1) in Rome, who formulated six doubts, and, with regard to the first of these, he argued as follows: Although the patron may not deny the right to have certain ecclesiastical functions performed in his

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chapel, he denied that this could be done indiscriminately, and without any dependence on the parish priest; he argued that the parish priest has a well-founded intention (1) Charles Menghiui undertook to defend the rights of the parish priest.

[*Latin ed. p. 511*]

REGARDING CHAPELS WITH REGARD TO SACRED FUNCTIONS AND PAROCHIAL RIGHTS. 511 iii by law (1) that all chapels situated within the boundaries of a parish are subject to the authority of that parish, as the Archdeacon wrote in can. Several c. 16 Lì: "and this is an argument from which it follows that a chapel is situated in the parish of some people; by the same token, it is presumed to be its own, unless the contrary is proven." Also, Dominic from St. Geminianus to the title. Concerning clerics or monks. Chapter, established. Augustine Beroa, Commentary on Decret, in chapter. Although it was said that the Patron enjoyed certain privileges by virtue of the Apostolic indult, nevertheless, since several acts can be performed in the chapel that relate to the external discipline of the Church, and which concern the care of souls, such as public functions, processions, and the like, it was denied that these could be performed, without the consultation of the Parish Priest, by the Patron, either within the chapel or elsewhere: and moreover, it was implied that the Patron could not celebrate solemn functions in his chapel, if these coincided with the hours in which the parish Mass is celebrated, lest the people be taken away from the Parish Priest and deprived of the evangelical explanation. But he insisted more, citing two articles of synodal constitutions, of which the first, in the year 1610, had stipulated: "we decree that those who celebrate... in public (chapels) within the limits of a parish, must abstain from all things which in any way directly or indirectly harm the parish, as has been established by the provincial council, and they must especially avoid hearing confessions there, nor distribute the Body of the Lord Jesus Christ, except to the lords of the place and their families; they must not ring the bells to summon the people, nor announce festivals and fasts." Also, in another synod in the year 1646, it was prescribed: "furthermore, let the laity, especially those in the countryside, who have care of chapels in which the sacrifice of the Mass is offered, take care not to allow secular or regular priests... to celebrate there in any way, even if they show any dismissal letters with the legitimate approvals of the Ordinary, unless first they have personally presented these same dismissal letters to the Parish Priest in whose parish the chapel is located, and after these have been recognized and examined by him, they have obtained permission from him, in the presence of those same priests. If this is not done, we declare the chapel forbidden by this very act." (1)

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See Fol. I. page 623 in the notes.

[*Latin ed. p. 512*]

512 CONCERNING ORATORIES WITH REGARD TO PAROCHIAL FUNCTIONS. And he deduced that such synodal prescriptions had the force of law for dioceses, because in the celebrated Decree of the City and the World, dated December 10, 1703, of the Congregation of Holy Rites, which was dealing with such controversies, the following exception was made: "Provided, however, that the conventions and agreements perhaps initiated in the erection of confraternities, and approved by the Holy See, as well as indulgences, synodal and provincial constitutions, and immemorial, or at least centennial, customs, remain in force." Therefore, in Bologna, on May 15, 1728, the Holy Congregation of the Council, in response to the question: "Can a confraternity independently of the parish priest fulfill any functions in its own church?", answered: affirmatively, provided that it is not prohibited by general decrees and synodal constitutions. But, with a clarification favorable to the parish priest, the Defender of the Faith, in a proposal presented to the Congregation in Novara on September 24, 1718, concerning the question: "Can the parish priest prevent the celebration of solemn Masses in the aforementioned oratory of the confraternity, whether for the living or for the dead, even after the parish Mass, in any case?", answered: affirmatively, unless the permission of the Bishop is added. Furthermore, with regard to sacred processions, he cited the 22nd question resolved in the celebrated Decree of 1703, which was worded as follows: "Can such processions be held outside the confines of the aforementioned churches without the permission of those whose territory is to be traversed?" To which the answer was: negatively, unless the permission of the Bishop is present. Moreover, in the present case, he maintained that canon law granted the parish priest the right to intervene, in which a lay person, such as the patron of the oratory, was interfering in the deputation of priests, confessors, and presbyters; and that a presbyter who had a well-founded intention concerning all the churches within the limits of his parish, was, according to *Petra ad Const.* 2, paragraph 11, in effect, usurping the rights of the parish priest. Concerning the second point, the Defender noted that "a lay patron cannot intermingle in the administration of offerings within the ecclesiastical assembly"; and, citing the authority of Fagnani in Chapter Pastoralis, De his quae fiunt, etc., Reiffenst. I. 3 Decret., title 30, on tithes, § 9, and others, he stated that the parish priest, as the primary minister of the parish church, is by right entitled to—

[*Latin ed. p. 513*]

REGARDING ORATORIES, BOTH REGULAR AND PAROCHIAL. 513. The founder is to intend to provide for the expenses arising from all the

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offerings which are received within the limits of his parish, whether they are for the oratory itself, or for an image, unless it is clear from the will of those offering that they intended otherwise; and this applies even to the simple administration, and it concludes that the parish priest is the natural administrator of all the offerings which are made within the confines of his parish. Regarding the third question, although the Defender conceded that, strictly speaking, the parish priest cannot demand to be invited to celebrate the sacred rites, nevertheless, considering that the refusal to invite does not constitute an offense, and for the sake of propriety, he concluded that, at least on solemn days, it is fitting for the parish priest to be invited: for in a small town, simple and even foreign priests might be avoided for the celebration, and the rector of the parish, to whom the greatest trust must be given, would be excluded. Having presented authorities to demonstrate the propriety of such a courtesy, and setting aside the fourth question, he proceeded to the fifth. Regarding the fifth question, the Orator inquired about the practice that prevails in Rome, whereby in all churches, vestments and utensils, and all other things necessary for celebrating the sacrifice, are not denied to any priest who wishes to celebrate, with due honors according to the dignity of the person. He did not deny that the founders, in the erection of chapels, are bound to provide for the utensils and other necessities; nor that chaplains are burdened with perpetual and ongoing obligations for the celebration of Masses; but he maintained that this cannot be said of Masses which are considered *adventitiae* (additional). As was defined in other resolutions in Osimo on February 23, 1726: regarding the question: "Are Rectors of Benefices, Chaplains, and others who celebrate in a collegiate church bound to provide the utensils to the Chapter of said church, and for this sum?" The answer of the Sacred Congregation was: "Rectors of Benefices, perpetual Chaplains, and Canons holding perpetual chapels, and the Chapter itself, are bound to provide the utensils of the sacristy in proportion to the perpetual obligations, at the rate of one obolus for each Mass, except for *adventitiae* Masses; and furthermore..." And since we are speaking of *adventitiae* Masses, it is forbidden, as is found in the well-known Decrees of Urban VIII, in which it is also stated: "Administrators, according to the acts, are not to be required to provide for the celebration of Masses in churches, and pious places, or for the alms of Masses."

[*Latin ed. p. 514*]

514 CONCERNING ORATORIES WITH REGARD TO SERVICES AND PAROCHIAL RIGHTS. And they must retain only the smallest portion, proportionate to the expenses they incur in celebrating the Masses, unless, when the church and other places do not have revenues which they may lawfully allocate for such expenses, and then the portion they retain must not exceed the value of the expenses necessarily incurred for the very Mass

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itself, and nevertheless, even in that case, it must be ensured that, from the funds remaining after the aforementioned deductions, as many Masses as have been prescribed by those offering alms are celebrated. Therefore, if it is not permitted to demand anything for the use of furnishings in external Masses, it certainly cannot be doubted that the Defender would conclude that nothing is to be paid for Masses celebrated in the public temple for the sake of devotion. Finally, the Defender raised the question of whether the Oratory ought to be open to the piety of the faithful, and it was judged that this should be answered in the affirmative, both because of the piety of the faithful to whom it must not be forbidden to offer their vows and prayers before the venerated Image, and also because of the nature of the Oratory itself, which is called public because it ought always to be open to the faithful, as Ferraris states in *Oratorium*, and others, specifically the Sacred Congregation of Rites in Nîmes, February 12, 1735, in which, having considered the question: "Whether this Oratory is public, or rather private," it responded: affirmatively with regard to the first part, and negatively with regard to the second; but with the obligation imposed on Joseph Corniti to restore the open doors of the atrium daily, and to establish a suitably endowed chapel.

THOSE THINGS WHICH WERE OBSERVED BY THE PATRON BY VIRTUE OF HIS OFFICE. The Patron merely presented a series of facts to the Sacred Congregation, which he believed could serve as a defense; but in addition, certain things were noted by virtue of his office: it was noted, for example, that the entire controversy could be reduced to the rights that flow from the patronage over the Oratory, and to those that arise from the possession of the Image. Among the rights observed, the first was that the Parish Priest could not prohibit ecclesiastical functions from being performed in the Oratory, which is located within the limits of his parish, provided that these do not infringe upon parochial rights, as stated in the decree of the Sacred Rota of Aversa, June 23, 1634, and by Cardinal De Luca, *Disputationes de Parochis*, n. 5, where, referring to a question debated in the Sacred Council of Bishops, very similar to the present one, he says: "It concerned a church with a door facing the road, and it was not a question of rights or..."

[*Latin ed. p. 515*]

REGARDING CHAPELS, WHETHER DEDICATED TO A SAINT OR PAROCHIAL. 515 "These [chapels] perform parochial functions, but concerning solemnities for devotion, and for the greater honor of the church and an encouragement to works of piety, in which acts, unless they concern or usurp the will or devotion, and the parochial right, whenever they do not deviate from the ecclesiastical ritual (concerning which, however, it pertains to the Ordinary, not the Parish Priest, to inquire), the Parish Priest cannot prevent or impose himself upon unwilling parties." And number 7

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adds: "Provided that the parochial rights are observed, such chapels have no subordination or dependence on the parish." Furthermore, several resolutions were indicated, which, since they are similar to the form of the Decrees of the City and the World of December 10, 1703, we omit them for the sake of brevity. Regarding the rights that arose from the protection of a holy image, such as the right to receive offerings and to administer them, it was noted with Fagnano in Cap. Pastoralis, no. 29, concerning those things done by Prelates, that offerings made with a view to a particular image are acquired, not by the Parish Priest, but by the image itself. Indeed, Fagnano, explaining this matter extensively in no. 29, although he generally held that offerings made to the image of the Blessed Virgin Mary or of another Saint, depicted or affixed to a wall or in a private place, are due to the parochial church; nevertheless, he limits this conclusion in the case where the intention of the giver is doubtful: for although it is true that, according to the old common parochial law, the intention to benefit the parochial church is established in the reception of all spiritual revenues that come within the limits of the parish, such as tithes, first fruits, offerings, mortuary dues, fruits, and revenues derived from the parish: nevertheless, this does not apply "if the offerings (these are the words of the Author) appear to have been made from a pious intention, with a higher act of piety; because then they are not due to the Parish Priest, but the pious intention of those who made the offerings must be observed: for everyone is the master and arbiter of their own affairs—" in the same way, if it should be established that the intention of the giver was that the offered thing should belong to the house or wall where the image is depicted, because that person was poor, or that the offerings should be converted to certain pious uses, then such an intention would certainly be fulfilled... "For this is the rule, that things offered are always acquired by that to whom the offering was made, as in chapter Palatum concerning testaments, etc." Also, Mantica, de Tacit. I, 13, letter 21, no. 38.

[*Latin ed. p. 516*]

316. CONCERNING CHAPELS WITH REGARD TO ECCLESIASTICAL FUNCTIONS AND PAROCHIAL RIGHTS. *Gnatel. Consul. 160 n. 21 tom. 4; Petra ad Const. 2 Anast. IV. sect. 2 n. 19 t. 2; Lotter de re benef. I. 1 quaes. 3 n. 33; Card. de Luca de decimis disc. 19.* In the present matter, it was also said to be advantageous to the Patron, since he desired to succeed the Religious in that place, both with regard to the custody of the Image, and with regard to the administration and disbursement of the offerings made in its honor. Considering these and other matters, the following questions are to be resolved. I. "Whether it is permissible for the Patron to entrust to any priests, independent of the Parish Priest in this case, the celebration of Masses and other sacred functions not pertaining to the parish, in his public chapel?" II. "To whom does the administration of the offerings made to the

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Image of the Blessed Virgin pertain in this case?" III. "Whether, on the more solemn feasts, the Patron is obliged to invite the Parish Priest to celebrate Mass in this case?" And, if affirmative, IV. "Whether and what alms are to be given to the Parish Priest celebrating Mass in this case?" V. "Whether, for the sake of devotion, the Patron is obliged to provide the necessary utensils to the Parish Priest celebrating Mass in the aforementioned chapel in this case?" VI. "And how is it to be provided that the chapel be publicly open for the devotion of the faithful in this case?"

RESPONSE. The Holy Congregation of the Council, having knowledge of the matter, responded on January 27th, postponing the decision, and with the following intention: "The intention of the Holy Congregation was that the Archbishop should take care to reconcile the parties, keeping in mind the Decrees of the Congregation of Holy Rites of December 10, 1703, concerning the proper public cult of the chapel and the Sacred Image; and that, if this could not be achieved, he should report on the reasons why, and under what conditions the Sacred Image was transferred to the chapel, and also what privileges the aforementioned chapel enjoys." It appears that the Archbishop has achieved a reconciliation of the parties, since the matter has not yet been presented to the Holy Congregation.

[*Latin ed. p. 517*]

CHURCHS AND CHAPELS: FUNCTIONS AND PAROCHIAL RIGHTS. 517 From these, the following are deduced: I. Questions which repeatedly arise between Parish Priests and the Patrons or Rectors of chapels located within the parish boundaries must be resolved according to the norms of the aforementioned Decrees (1). II. Such Decrees should limit the jurisdiction of Parish Priests within their parish to those rights which are properly and exclusively parochial (2). III. Among such rights, the jurisdiction over churches or chapels located within the parish boundaries should not be included. IV. However, such principles must be tempered by reasonable customs, diocesan laws, or legitimate agreements. V. According to the sacred canons, Parish Priests, when the right of refusal is in force, are considered to have a legally established intention regarding all offerings made within the parish, so that offerings made to a chapel are considered to be made to the Parish Priest, unless otherwise proven (3). (1) Such Decrees, which have been issued to resolve these frequent questions, are presented in Volume I, page 591 and following, in the notes. (2) The principal rights which are properly and exclusively parochial consist in the right of refusal, where it is in force, or of receiving the offerings of parishioners, which are offered by the parishioners in the manner of, or as a substitute for, tithes; in the right which corresponds to the obligation of parishioners to receive the Sacrament of the Eucharist from the Parish Priest during the Paschal season; in the right to administer the sacraments of the Eucharist and Extreme Unction to the dying; in the right to perform funerals and burials, whenever

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the deceased does not choose another church or burial place, or does not have the burial place of their ancestors, in which case, however, the fourth part, or canonical portion, and everything connected with it, according to local customs, belongs to the Parish Priest; although the obligation of parishioners to hear Mass on holy days in the parochial church is included in parochial rights, it is not observed by general custom. (3) What is meant by the legal expression: to have a legally established intention regarding something, is explained in Volume I, page 623, in the notes. At the present time, it no longer seems possible to say that the Parish Priest has a legally established intention regarding the reception of all offerings made within his parish: for, by custom, not only in the City, but, it seems, throughout the world, as the right of tithes gradually diminishes in almost all places, after the Parish Priests have been assigned the revenues of benefices, or by the government, pensions according to a certain anomalous law, the offerings of the faithful are not considered to be made to the Parish Priests, unless it is proven either by the intention of the offerers, or by a particular custom. Therefore, in the often-praised decrees of the Congregation of Sacred Rites, in dubium xxviii, the following was proposed and discussed: "Can a Parish Priest..."

[*Latin ed. p. 518*]

518 EX S, COMMA » CONCERNING BISHOPS AND REGULAR CANONS. EMPHYTEUSIS. On July 28th and August 4th, 165. Since the construction of railways began within the Papal jurisdiction, it has repeatedly happened that, due to the actions of the Prince, that is, by laws established by him, goods are appropriated, of which the direct dominion belongs to the Church, while the useful dominion pertains to private individuals. Therefore, a completely new question, which could never have been raised, frequently arises between the Church, as the direct owner, and private individuals, as the owners of the useful right, namely, whether the price obtained from that forced sale should be divided between both parties, and in what manner; or whether the same price should be invested in stable and secure assets, so that that property would stand in the place of the good sold, the enjoyment of which would be ceded to the emphyteuta; the customary annual rent remaining due, as before. » It is forbidden to interfere in the administration of » offerings and alms collected in the aforementioned churches, or » to retain the key to the receptacles for them: » and the answer is: no. This decree can easily be extended to other churches, since these are not under the authority of the parish priests, except for those that are properly and exclusively parochial: nor are offerings considered to be made to the parish priest. Therefore, the administration of these offerings belongs to the Rector of the Church, under the immediate authority, or at least the supervision, of the Ordinaries, according to what we have explained in Appendix X of

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this volume. Nor should it be overlooked here, an observation appropriate to the present time, that the patrimony of the Church is being stolen by the present demagogic governments, and that this theft of goods ultimately harms the faithful people: for it is fitting that the faithful should support the priests, and provide all that which pertains to divine worship; and if tithes have ceased at the present time, because the Church is impoverished by the seizure of its goods, then tithes and offerings must be restored: "Do you not know that those who minister about spiritual things live of the spiritual? and those who teach the word live of the word?" 1 Corinthians 9:13-14. Therefore, the compilation, or distinction, of ecclesiastical property, not only harms the poor, for whose benefit it was also established, but also increases the burdens of the faithful people.

[*Latin ed. p. 519*]

EMPHYTEUSIS. 519 In the year 1865, two controversies of this nature were pending before the Sacred Congregation of Bishops and Regulars, one originating from the diocese of A, and the other from the diocese of R. Taking advantage of this opportunity, it seemed, indeed it was necessary, to establish a general rule, firm and safe, which was lacking, so that all questions that might arise could be resolved with the greatest ease. Therefore, it was ordered that, under a single consultation, the arguments concerning the particular controversies in both the diocese of A and the diocese of R should be examined in detail, so that a rule could be established that would be most safe in all particular cases. To avoid any lack of clarity, we will first discuss the two particular questions separately, and then we will address the general question in somewhat more detail. Concerning the diocese of A: The Diocesan Seminary held direct ownership of certain properties, of which the useful ownership belonged to the local Municipality without any time limitation, or in perpetuity. When works for iron roads were being carried out, it happened that one of the properties held under emphyteusis was occupied by the contractors of those works, and, according to the laws on this matter promulgated by the civil government, the price was duly estimated and deposited in the public treasury. Meanwhile, a considerable disagreement arose between the representatives of the Seminary, as direct owners, and the officials of the Municipality, as useful owners: for the representatives of the Seminary maintained that the entire price should be received by the Seminary, deducting only the proportional rent according to the quantity lost in the forced sale. But the officials of the Municipality vehemently opposed this, and insisted that the price should rather be awarded to them, while maintaining that the entire rent should continue to be paid as before. Before the opinions of both parties were called for in the consultation, the deductions of both parties were carefully examined in writing, along with the opinion of the Bishop, which was entirely in favor of the representatives of the Seminary. HOW THE REPRESENTATIVES

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JUSTIFIED THEIR OPINION. — They first pointed out that, in fact, the emphyteutic property had completely ceased to exist: for it could no longer be cultivated and the customary fruits could no longer be obtained. And indeed; the contractors of the Society...

[*Latin ed. p. 520*]

520. EMPHYTEUSIS. The original owners had altered the terms, and had taken them away from the original lords. Indeed, they maintained that emphyteusis ceased when, for example, the emphyteutic house completely collapsed, or when the land was lost entirely or in part due to a river flood; and the Deputies agreed that in such cases, the land should be considered as having been sold and lost due to force majeure, against which it could not resist, namely, due to the act of the Prince. This situation, they argued, was equivalent to a fortuitous ruin or a flood in the law. Therefore, if the material basis of the emphyteusis was lacking, the emphyteusis itself was also lacking; and so, if anything remained of the value after such an event, reason dictated that it, as if freed from all bonds, should be transferred to the direct lord, for the benefit of the lord, in accordance with equity, with a remission of the customary dues, which would compensate for the losses incurred.

HOW THE MUNICIPALITIES DEFENDED THEIR POSITION. The municipalities had recourse to the edictal law of the Government of July 3, 1852, in which, in article number twenty, it was explicitly stated that the price obtained from lands seized in a forced sale ordered by the Prince, as now happens in the iron roads, should take the place of the alienated lands, and that all burdens, mortgages, and rights previously attached to the lands should be transferred to that price by virtue of law. Thus, by virtue of this legal fiction, the situation remained as it was before the sale: although the land had in fact been lost, it was replaced by a price to which, by virtue of law, all prior burdens or rights were attached, and therefore also the emphyteutic rights. With this established, the municipalities argued that the land remained with the emphyteuta, subject to the obligation to pay the agreed compensation. Therefore, the price derived from the forced sale also had to be left in the hands of the emphyteuta for management, but in such a way that its ownership remained with the direct lord, and the customary dues continued to be paid to him until the emphyteusis ceased. However, the municipalities pointed out that, since the situation appeared to continue as if nothing had happened by virtue of the law, the argument based on a flood or a ruin could not apply: for if this were the case, it would be as if no change had occurred in the emphyteutic land.

B. On March 4, 1793, the Collegiate Chapter granted certain chapter

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goods to...

[*Latin ed. p. 521*]

EMPHYTEUSIS. The third male generation had been granted to Bernardino. Bernardinus, who constituted the first generation according to the agreement, had already passed away in life. He was survived by his son, who constituted the second generation; and this son had already reached the age of seventy, and he had children, the youngest of whom was over the age of twenty-seven. Consequently, it should have been possible to consolidate the beneficial ownership of the property with the direct owner after a relatively short period of years. Among these properties, some had suffered common fates with others, namely, that they were occupied for use by companies involved in the construction of railways. There was no disagreement between the Chapter and the emphyteuta regarding the principle: they agreed that the price received from the forced sale should be divided proportionally between the two parties, according to the judgment of experts. However, the Bishop considered this to be far from just and refused to give his consent; therefore, the price was deposited with the public treasury by the aforementioned companies. Furthermore, the Bishop, realizing that not much time remained before the third generation ceased to exist, and the emphyteutic property would be released from all bonds and revert freely to the Chapter, proposed that the emphyteuta should be compensated fairly and protected from all detriment, with the remission of the canon and the granting of a just sum, to be determined by experts according to the principles of equity, but that the money should be received from the Chapter and invested by them in safe and productive assets. However, a further doubt arose regarding how the damages should be calculated: for the Bishop considered that the valuation should be made with the least possible consideration for the impending reversion, while the emphyteuta, on the contrary, vehemently opposed this, considering it to be detrimental to him. Therefore, the question was brought before the Sacred Congregation of Bishops and Regular Canons, which ordered that both the Bishop and the emphyteuta be heard in writing, and undertook to weigh their arguments. WHAT THE EMPHYTEUTA ALLEGED TO PROVE HIS POSITION. – The emphyteuta argued, without any doubt, that the emphyteusis concerning the alienated property should be considered as dissolved and terminated: since the subject matter upon which the contract was based had been removed by the action of the Prince, and no longer remained in the hands of the owner, whether direct or beneficial. This argument, although expressed in different words, essentially amounted to the same point that the Deputies of the Diocesan Seminary A. had previously argued. However, a more

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forceful argument –

[*Latin ed. p. 522*]

522. EMPHYTEUSIS. There was a dispute concerning the proportion that should be adopted between the Chapter and the landowner in the distribution of the price to be paid. For the emphyteuta, when dealing with the emphyteusis in the second generation, maintained that the capital sum, relating to the canon, should be estimated at three scudi and a half. Thus, if the total price derived from the sale reached 684 scudi and 7 denarii, and the canon for the entire emphyteusis amounted to 25 scudi and 10 denarii, it should already have been reduced to the sum of 16 scudi and 46 denarii. Consequently, the sum of 408 scudi and 98 denarii would belong to the emphyteuta himself, while the remaining sum of 275 scudi and 84 denarii would accrue to the Chapter.

This proportion, however, seemed to be in accordance with equity and common sense, and it also found its basis and support in the edictal law of the year 1848, by virtue of which emphyteutic contracts could be freed, commonly known as "Francavi." In that law, it was stipulated that, when the emphyteusis reached the second generation, the canon should be calculated in proportion to three and a half scudi for each centenar of scudi. Thus, he who paid a canon of three and a half scudi could have the property freed by paying a sum of one hundred scudi; he who paid seven scudi, two hundred scudi, and so on.

Although the emphyteuta admitted that this law might be considered temporary, he nevertheless maintained that, as it was a law deemed just and equitable by the Government in a similar case, it offered a simpler and safer standard for private individuals.

WHAT THE ORDINARY SHOULD ANSWER TO THE ARGUMENTS OF THE EMPHYTEUTA. The Ordinary denied that the emphyteusis, in the case under consideration, should be regarded as a mere sale. And to support his assertion, he himself referred to the edictal law of July 3, 1859, in which it was prescribed, by a legal fiction, that the emphyteutic contract should continue in the price, with all the qualities of the emphyteusis, as before, and not as if no change had occurred.

However, he strongly opposed the proportion that the emphyteuta wished to apply in the division of the price. With the help of more learned men, he demonstrated that the emphyteuta wrongly and improperly claimed three and a half scudi for each centenar of scudi.

[*Latin ed. p. 523*]

EMPHYTEUSIS. 523 It has been held to be fixed; for although emphyteusis, in the second generation, consisted of what was customary at that time, nevertheless, it is more consonant with justice and truth that emphyteusis be considered to extend to the third generation; then, moreover, according

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to the judgment of those experts, the land of the same fertility was deemed to have been estimated in all parts, although this did not at all correspond to the truth. Finally, the edictal law of the year 1848 could not provide any rule in this case; indeed, it was generally understood to apply to all cases that might occur, although in some particular cases it might perhaps seem neither equitable nor just: for the legislator, considering the sum of cases, would not concern himself with trifles; and it is more common and frequent to follow what is customary. Indeed, in order that the Church might suffer no detriment, it is necessary to neglect and disregard the rule established in that law, whenever it deviates from justice and truth in particular cases, which would indeed happen in this matter, if the emphyteuta had listened to his own [self].

ON THE QUESTION CONSIDERED GENERALLY.— He who had the task of writing the Consultation considered that the entire argument could be encompassed and completed if four, which are presented at the end, were discussed. However, we shall confine ourselves only to the discussion of the first doubt, and we shall not concern ourselves with the others. For the entire force of the controversy is contained in the first doubt, which, when resolved, the others can be said to be resolved in some way: and then the affirmative answer, by which the first doubt was dismissed, makes no room for the second, third, and fourth doubts. Therefore, in the first doubt, it was questioned whether emphyteusis would be represented and would endure in price as if a forced sale had not occurred, or rather, whether it should be said to cease in the part alienated.

THOSE ARGUMENTS IN FAVOR OF THE CONTINUATION OF EMPHYTEUSIS IN PRICE. — In support and in defense of the affirmative opinion, the edictal law of July 3, 1852, was brought forward, and its Latin words are recited as follows: "The ownership of alienated lands passes to public administration free from all burdens, hypotheses, and real rights, which [are] PRESENTED."

[*Latin ed. p. 524*]

524. EMPHYTEUSIS. Previously, it was burdensome. The price succeeds in the place of the lands, and upon it, by virtue of the law, all the bonds of the mortgage, and the aforementioned rights, are transferred. Indeed (thus it was understood), the representation of the lands in the price, as established by law, is so clear and evident that it requires no further clarification: for, by the fiction of the law of emphyteusis, it is as if no change has occurred. It is indeed certain that a substituted thing takes on the nature of that in whose place it is substituted, as Barbosa states in *Axioma Iur.* 218; since such is the quality of substituted things, that they acquire the nature of that in whose place they are substituted, as is taught by the Rota in *Romana Spolii seu Immis.* concerning the matter, Mont., July 1, 1718, § Paul before Crispus, and Decision 6 before Ratio, no. 7, and throughout the

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more recent pronouncements, as can be seen in their general index, under "Subrogation." It would, however, be wrongly objected that emphyteusis cannot be a real contract unless it is established in immovable goods that are subject to cultivation or maintenance, such as fields and buildings. This, however, presents no difficulty in the case at hand; for this defect is abundantly remedied by the disposition of the Supreme Prince, who commands that the substituted price shall stand in place of the land. And indeed, the Sacred Rota in *Romana Fideicom.* of June 1, 1699, no. 10, after De Luca, *Mantiss.*, vol. 2, Book X, on Fideicommissa, decision 5, concerning fideicommissa, uses words that have an affinity with emphyteusis in this matter, and thus teaches: "Because, when an alienation has preceded due to a necessary cause, namely, a coercive sale in virtue of the Gregorian Bull which strictly commands that the price be reinvested and that the thing remain subject to all dispositions, prohibitions, and burdens to which the sold thing was subject, and the Loca Montium have been acquired in accordance with the form of said Constitution, it does not seem doubtful that the fideicommissum still prevails over them, as with substituted things... supplemented by the very law by which the action of the person whose will it was to substitute was carried out." This objection has even less weight, because it is not a question of emphyteusis as it should have been from the beginning, but of a situation that arose later, by the act of the Prince, as De Luca rightly argues in *De Emphyt.*, Discourse 36, no. 20, concerning goods that were coercively alienated in virtue of Bull 41 Gem. VIII by the Barons' Congregation—since then (as he himself says), there is no—

[*Latin ed. p. 525*]

EMPHYTEUSIS. 525. It is to be understood that that feudal, or emphyteutical, or fideicommissary quality, which was inherent in the thing itself, should be transferred, and remain in the price, as if substituted; because the Prince, in those things which contain the fiction of law, can assimilate it to truth, and make it so that those things which are fictitious are held to be true. It can also be opposed, because the price, as it contains dry money, cannot give any fruit; therefore, neither can one obtain any emphyteutical benefit from it, nor can the direct lord justly demand the canon, so that it results that the fiction of the thing, by the nature of the thing, does not operate any effect. Just as, when it was a question of the Bull of Barons, or of the Gregorian Constitution, the price was placed in the Locis Montium, and was thus considered fruitful, so also today, when there is no immovable property in which the price can be invested, there are public debt securities, commonly called Consolidato, which can take the place of the sold property, and yield fruit: and this has indeed happened on the occasion of the legislative edict of April 9, 1848, in which it was stipulated that the direct pious institutions should receive the canon from the treasury. Therefore, this was constituted by the Government as a certain, fixed sum

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of revenue, inalienable and corresponding to a debt, by means of which the canons could be safely paid each year. Indeed, nothing prevented the same public debt securities from being acquired even in the case of forced sales, of which we are speaking, so that they would take the place and the position of the sold properties until the end of the emphyteusis.

THE POINTS WHICH WERE ADVANCED IN SUPPORT OF A NEGATIVE OPINION. — From the notion of the emphyteutical contract (thus it was argued), as it is drawn from its own nature, and as it is commonly admitted by interpreters, it follows that three things are required to constitute the substance of the same contract, namely, consent, the thing, and the canon. Indeed, as soon as the forced sale takes place, these three things vanish. And truly, the consent of the parties vanishes, which existed from the beginning, and virtually continued until the thing was in the hands of both the lord; but after it has come into the hands of the Prince, this consent completely fails: for the parties could not foresee this in any way, because the mind does not go towards the unknown. The thing also vanishes, as is evident; and this is due to a fact which is not imputable to either the direct or the useful lord. Finally, the canon—

[*Latin ed. p. 526*]

5 ″2G EMPHYTEUSIS. It does not pertain to the canon: for it is either understood as a sign of recognition of ownership; but this has little place, for when ownership ceases, the recognition of it must also cease; or it is understood as corresponding to the fruits which are received by the emphyteuta from the thing; but even this correspondence is lacking in this case, since no fruits can be derived from it. Nor are better principles invoked, those arising from the nature of subrogation: for as Barbosa himself observed in Axiom 213, n. 2, ″a subrogation does not take on the nature of that to which it is substituted, unless either as a subsidiary, or when the subrogation is in full right.″ Understand also, as we touched upon above in n. 1, that when a subrogation has the qualities of that to which it is substituted, because if a quality, or one of the necessary requirements of the subrogation is lacking, or if a different quality is given in either case, it does not take on the nature of that to which it is substituted.″ This very doctrine is received and commonly taught by the Roman Rota, as can be seen in the General Index of Recent Decisions under the word ″Subrogatum.″ Indeed, from the foregoing, it becomes very clear the difference in nature between the price and the thing inherent in the emphyteutic property. To which is added that emphyteusis necessarily involves cultivation or maintenance (when, for example, someone takes possession of a house that has already been built in emphyteusis), whereas neither of these things pertains to the price; everyone sees this. Finally, since there are more burdens and rights of ownership, both direct towards the owner and of the direct owner towards the usufructuary, which the Doctors explain in detail, it is most difficult,

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if not impossible, to reconcile these with each other, so that the right of each may be rendered, as justice demands. And it cannot be said that this is a sufficient solution, considering the investment of capital in real estate, or in public debt securities, taking as an example the forced sales carried out in virtue of the Gregorian Bull, or the Baronial Laws, or the edictal law of March 9, 1848. In these cases, indeed, it had been prescribed by the Pontiff's decree that the price should be invested in Loca Montium, or in public debt securities. But on the contrary, in the edictal law of July 3, 1852, it is prescribed that the price should represent the thing sold, and that all burdens or rights should be transferred to it, but it does not go further to impose any other obligation on the parties concerned. Thus...

[*Latin ed. p. 527*]

EMPHYTEUSIS. 527 Moreover, the direct owner, as well as being just, is also useful, since no law compels him to choose between acquiring immovable property or public debt securities, or even to enter into any new contract. What, therefore, remains, except to divide the price between the two parties, and to allow either one to dispose of it according to his own will and judgment? Otherwise, that price will perpetually remain unproductive, and neither will the Prince be able to obtain the return he expects, nor will any benefit accrue to the direct owner or the useful owner. For money, unless human industry is added to it, which expends it in some useful business, lies inert and useless, producing no effect whatsoever. *Expositio Dubiorum, I. « Whether an emphyteusis is transferred and continues in the price, as if no expropriation had occurred, or whether it ceases » concerning property expropriated in this case. To the extent that the answer is negative regarding the first part, and affirmative regarding the second. II. « Whether the aforementioned price is entirely ceded to the direct owner, with a reduction in the canon, and by what measure. » III. « Whether, rather, it is ceded to the useful owner, with the entire canon being paid in full from his side. » To the extent that the answer is negative regarding both. IV. « Whether there is a place for compensation between the direct owner and the useful owner, and by what measure, in this case. »

RESPONSE. — The Fathers wrote on July 28, 1865, after deliberation and to the Most Reverend Pro-Secretary: This means that the Reverend Father Pro-Secretary must address the matter with the Supreme Pontiff in order to initiate a suitable resolution. After the Reverend Father Pro-Secretary presented the matter to His Holiness Pope Pius IX in an audience held on August 4 of the same year, His Holiness ordered that the matter be responded to with the following words (here given in Latin): It is to be constantly maintained that the price of emphyteutic properties expropriated for pious causes must be reinvested either in the acquisition of rural properties, or in public debt securities of the Holy See (commonly known as "Consolidato"), registered in the name of the direct owner, with men-

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tion of the useful owner, to whose benefit the fruits of the capital invested in this manner must be ceded in their entirety.

[*Latin ed. p. 528*]

$28. EMPHYTEUSIS. During the period for which the emphyteusis lasts, the direct owner retains the right to demand the original canon, laudemia, and quindecim in cases, as has been established by law, both concerning the principal capital invested and concerning the part of the land not expropriated. From the foregoing, it is understood: I. The reduced price obtained from the forced sale of partial emphyteutic properties, pertaining to the direct ecclesiastical ownership, in order that the passage of railways may be opened for the public good, must be invested in the acquisition of rural properties or securities of the public debt of the Holy See. II. Any new acquisition of such properties or securities, substituting for the emphyteutic property dispersed through a forced sale, must be understood as a part of the emphyteutic land, in place of which it is substituted. 511. Therefore, this new acquisition must be subject to the same contractual laws. IV. Finally, it is understood that securities of the public debt of the Holy See can be substituted in place of the land.

DISPENSATION. February 1, 1867. Summary of Facts. A certain pious woman, in her last will and testament dated September 27, 1632, ordered that a canonical chapel be established in the cathedral church, with properties assigned by her, and with the obligation for a chaplain to celebrate, or to have celebrated, two Masses each week, and one Mass each year for the anniversary. She made no mention whatsoever of passive patronage; but with regard to active patronage, she reserved the right and faculty to nominate and present chaplains for the benefit of John... and his sons and descendants from both lines, and in the absence of such, and when-

[*Latin ed. p. 529*]

DISPENSATION. 529 It has not occurred that [such a thing] has happened, to the favor of the aforementioned Cathedral Chapter, perpetually. The canonical erection of the chaplaincy took place in its time; however, the observance regarding the manner and persons of the patrons in exercising the right of patronage could not be gathered from the records; only the last three instances were clearly evident. For in the year 1738, a cleric named M. was designated by the family M., the family P., and the family L.; in the year 1778, a priest named C. obtained the designation from the aforementioned families M. and P.; in the year 1788, a boy named C., with the help of a dispensation, obtained the chaplaincy through the designation of the aforementioned family M. After the death of this last chaplain, on January 14, 1865, the chaplaincy became vacant, and two days later, the Ordinary publicly invited the patrons to exercise their right of designation. An immense, and almost unbelievable, number of patrons emerged, amounting

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to 285, who claimed the right to designate, and, as it turned out, exercised it. Furthermore, as the records showed, men designated women, fathers designated sons, uncles designated nephews; and also, some of the patrons, with the power to vary the usage, had repeated the designation in different persons, not only three times, but four times. Finally, it was said that some shadow of simony had intervened. Four were designated from this number of patrons, of whom the first was a priest designated by the family through a testatrix, a person entirely external, who received 112 votes. The second was Anthony, a boy of nine years of age, belonging to the designated family, without tonsure, who received 83 votes. The third was Joseph, aged 11, also deriving from the designated family, without tonsure, but wearing clerical attire, and received 64 votes, who was requesting a dispensation from the age requirement. The fourth was finally Joachim, born to the designated family, of the age of 16, who received the support of eight or nine votes, and who was requesting the attainment of the chaplaincy from the Sacred Congregation of Propaganda Fide and the Royal Chamber. The Ordinary, having received information and a vote regarding the manner, submitted the matter to the judgment of the Sacred Order in every respect. Each party then presented their competing arguments. The last three placed all the force of their defense in the fact that...

[*Latin ed. p. 530*]

530. DISPENSATION. Those who were called to the right of patronage would come forward: others also added stipulations, which we consider it unnecessary to recount. The priest, however, declared that he had the majority of votes; and, in order to repel his three competitors, he pointed out that the testatrix had not mentioned even a single word about passive patronage, so that they could not obtain any benefit from the family of the person called, which was endowed only with active patronage; and therefore they were in the same condition as himself. With this established, he concluded that they (since they were incapable of holding the chaplaincy, not only because of the lack of priesthood, but also of the clerical state, and of age) did not have a canonical cause to seek a dispensation, and that such a dispensation should not be granted to the detriment of a third party, namely, the priest himself, who had obtained the right to the matter by a majority of votes.

DISCUSSION OF THE SYNOD. WHAT SHOULD BE DONE EX OFFICIO. Therefore, it was established in the first place that the chaplaincy of which we are speaking is ecclesiastical; and therefore a true benefice, since two characteristics are present which are necessary for a true benefice to be considered as such, namely, the canonical erection of the chaplaincy, and its collation in each vacancy by the ecclesiastical superior, according to what we have said on page 327. Consequently, among the four competitors, the priest alone was found to be capable of obtaining it. Furthermore, it

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seemed even more probable that the same chaplaincy was to be considered sacerdotal, that is, in such a way that it required a priest who had already been promoted to the priesthood. For the testatrix had ordered the chaplain to celebrate the Divine Office. If, however, she had added the condition that the chaplain should be hindered, then it would be understood that the chaplain was hindered; but a person is only considered hindered when he has the power to celebrate, but is completely unable to exercise it for some reason. He who lacks this power is not hindered, but is properly called incapable and unfit. If, moreover, the chaplaincy were to be considered as being in the process of being obtained, that is, by one who is on the way to obtaining the priesthood; nevertheless, it was noted that no one, except the priest, was adorned with the clerical state, which is the first degree, in order that he may receive the lesser and greater orders.

[*Latin ed. p. 531*]

DISPENSATION. 531 Furthermore, in the present case, relatives were indeed named alongside a non-related priest; however, they cannot claim precedence over the non-related priest, since the Testatrix remained silent regarding the inheritance rights. Although, under certain circumstances, canonical equity sometimes suggests that relatives should be preferred to non-relatives, nevertheless, according to the strictness of the law, relatives cannot claim any precedence over non-relatives. Therefore, in this matter, four competitors are equal in standing. Moreover, since certain patrons had already altered the nomination within the prescribed four-month period, it was noted that, according to the teaching of the authorities, lay patrons can indeed alter the nomination, but not in a corrective manner, that is, after having presented one candidate, they can present another, but not in such a way that the first candidate is deprived of the right acquired through the presentation. However, once the possibility of alteration has been exercised, it cannot be exercised again in favor of a third, fourth, and so on. Furthermore, in addition to the necessary qualities that distinguished the priest from the others in order to obtain the chaplaincy, it was seen that he possessed a greater number of votes. For in this matter, the fathers appeared to be nominating themselves along with their sons, and uncles with their nephews, and women with men, according to the teaching that Fargna, in *De iure patronato*, page 2, canons 1 and 2, section 6, transmits; also, the Sacred Roman Rota, in *Jurispal*, June 26, 1709, before Priolo, §; and what is referred to by the same Fargna, in the aforementioned passage, number 58, where it is stated that the concurrence of sons with their father should be allowed to claim a place in the right of patronage, reserving the favor of agnatic kinship for the house or family that the founder considered, in general and in the manner of a university. It was also found that the Holy See does not grant dispensations to those that appear to be detrimental to the rights acquired by others; it only indulges in this occa-

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sionally, if the one who requests the dispensation enjoys a passive right. For in this case, the Supreme Pontiff removes the impediment that prevents the passively entitled person from acquiring the benefit; and therefore, the one who is a non-relative, or who does not enjoy a passive right, can justly lament, as is explained in the case of Perugia, concerning the chaplaincy, on May 14, 1774, §, before the Sacred Congregation. The present matter is before the Sacred Congregation.

[*Latin ed. p. 532*]

532. DISPENSATIONS. It was not omitted to observe that, among the great number of patrons, no one had yet conclusively demonstrated their descent from the family; and that the suspicion of simony, raised by the patrons who had nominated the priest, seemed to have been strengthened by certain testimonies subsequently presented. With these and other observations in mind, the matter concerning Bubius was to be examined. "Whether and by whose favor should the Most Holy Congregation be petitioned for the requested dispensation; or rather, whether the place belongs to the canonical institution of the priest in this case?"

RESPONSE: The Holy Congregation of Bishops and Regulars, after discussions held on March 16, 1866, decided to respond negatively in all respects concerning the first part; regarding the second part, it was deferred, and it was to be written to the Bishop... according to the understanding (1).

CONTINUATION OF THE CAUSE. In accordance with the understanding of the Holy Congregation, the Ordinary responded: it certainly seemed to him that some, at least, of those who had nominated the priest, could demonstrate their descent from the family with legitimate proofs. Indeed, from a fully justified genealogical tree, it was clear that they were directly descended from those persons who, in the last three states, had peacefully exercised the right to nominate. As for the matter of simony, the Ordinary examined the patron who was accused of having been involved in the crime of simony, who declared that he had supported the priest through simony, and who asserted that the priest had promised him to give him certain benefices to cultivate, and also some supplies of grain; then, two other witnesses, from whom it was clearly proven that the priest had promised one or the other patron to give him certain fields to cultivate, if he obtained the chaplaincy. Here, certain principles of law were brought forward by the one who held the office of writing the Consultations, namely, the doctrine presented by De Amoeno concerning Delicts and penalties, title 8 (1). The understanding of the Holy Congregation was that the Bishop should report whether any of those who had nominated the priest were, in fact, entitled to do so by an unquestionable right, and whether the deductions concerning

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the aforementioned simony were well-founded.

[*Latin ed. p. 533*]

DISPENSATIONIS. 533 §. 7 de Simonia n. 3 1, ubi scripsit: « Difficilis probationis est crimen hoc (simoniae), ut tradunt Decius, Cravetta, et Rodoanus; » ergo, probatur per praesumptiones et coniecturas, sed hae « debent esse violentae ut resolvit Mascardus, et debent plene et concludenter probari, ut firmant Anania et Felinus. » Et n. 3 3, idem auctor tradit, socios criminis simoniae possunt quidem accusare, sed non de hoc testificari, juxta cap. 10 Veniens de Testibus, quo legitur: « Nos tuam sententiam commendamus, eo quod ille qui eodem erat infectus crimine, inde contra eum testificari non posset, nullique de se confesso, adversus alium de eodem crimine sit credendum, nec unius testimonium ad condemnationem sufficiat alicuius. » His aliisque animadversis proposita est secunda pars formulae dubii, quae insoluta mansit: Dubium. « An et quomodo locus sit canonicae institutioni Sacerdotis in casu. »

RESOLUTIO. — Die 1 Februarii 1867, Emi Patres rescripserunt: affirmative in omnibus, et amplius.

Ex HIS COLLIGES:

I. In iure patronatus gentilitio ad instar universitatis constituto, omnes simul de familia a Testatore vocata ius nominandi habere, patres nempe cum filiis, patruos cum nepotibus, masculos cum foeminis.

II. Secluso iure patronatus passivo, eos qui de familia patronorum forte praesententur, hoc unico titulo, ius praelationis in concursu extraneorum sibi vindicare non posse.

III. Quin imo, hoc in casu nec esse in consideratione habendas consanguineorum nominationes, quoties hi qualitatibus careant requisitis tum a testatore, tum a iure.

IV. Quare eum, qui unice habilis nominatus reperiatur, in beneficio esse instituendum, quamvis forte non constet omnes Dominantes esse veros patronos.

V. Denique, colliges, qui socium in simoniae crimine se fuisse fatetur, eius testimonium adversus socium vim testandi non habere: maxime si alia desint argumenta.

[*Latin ed. p. 534*]

334 FROM S, C 0 1 BORN 0 M I \ OF U. EVI i Those 11, UTINENSI. DB SODALITY. On December 9th, the feast of St. Peter, the Prince of the Apostles, 1862. In the Archdiocesan territory of Udine, a sodality was established with the consent and authority of the Ordinary, under the invocation of St. Peter the Apostle, for the purpose of assisting the Holy See through prayers and works. This sodality was affiliated with the Archsodality of

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the same name established in Rome, in order to obtain those plenary indulgences which the Roman Archsodality has been granted by the Supreme Pontiff. However, since the prayers and works within the Udine sodality were not in any way determined, but were entirely left to the discretion of the members, and in contrast, the daily prayers and monthly offerings are specified in the statutes of the Roman Archsodality, certain doubts arose which the Brothers of the Udine sodality requested to be resolved.

I. "Whether, in light of the Pontifical Briefs of October 31st and November 4th of the year 1860 (1), it is permissible in any diocese, with the consent (1) The cited *Litterae* are in the form of a Brief and are of the following tenor:

PIUS IX, POPE. To perpetuate the memory of this event. "Since, as We have learned, a pious sodality of both sexes has recently been established in this Our City under the title of St. Peter, the Prince of the Apostles, which has the purpose of assisting the Apostolic See through prayers and works, especially in this difficult time; We, so that such a sodality may increase day by day, by the mercy of Almighty God, and with confidence in the authority of the blessed Apostles Peter and Paul, grant to all men and women who shall join this sodality in the future, on the first day of their joining, if they have truly repented and confessed, a plenary indulgence, and also to the present members and associates of this sodality, who are also truly repentant and confessed, and who receive the Holy Sacrament of the Eucharist, a plenary indulgence on any public feast day, namely, the feasts of St. Peter..."

[*Latin ed. p. 535*]

WHEREAS, certain associations have been established with the intention of aiding the Holy See through prayers and works, and although these prayers and works are left to the discretion of the associations, it is desired that the associations of St. Peter the Apostle, including the Cathedral of St. Peter the Apostle where he first resided in Rome, and the Basilica of St. Peter in Chains, visit these places annually from the first vespers until sunset, and there offer devout prayers to God for the concord of Christian princes, the eradication of heresies, and the exaltation of the Holy Mother Church; and on the day that they perform these actions, we, in the Lord, grant to all a plenary indulgence and remission of all their sins. Furthermore, to all Christian faithful of both sexes who are members of these associations, and who, on any day, with at least a contrite heart, recite the Our Father, the Angelic Salutation, and the Trisagion, as well as the Apostles' Creed, for seven years and forty days; and for each work that they perform, we grant a remission of one third of the penitences prescribed to them, or of any other debts of penance, according to the custom of the Church; and we declare that all these indulgences, remissions of sins, and relaxations of penances can also be applied to the souls of Christian faithful who, united

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with God in charity, have departed from this life, as a form of suffrage.

In opposition to those who do otherwise, notwithstanding any circumstances; these present decrees are valid for all times, present and future. We decree that these present letters, or copies thereof, even printed ones, signed by a public notary and sealed with the seal of a person holding ecclesiastical office, shall have the same force and effect as if the original documents were exhibited or shown.

Given in Rome, at St. Peter's, under the Fisherman's Ring, on the thirty-first day of October, in the year one thousand eight hundred and sixty.

[Signature]

G. CARD. DE GENGA.

PIUS PAPA NONUS

For the perpetual memory of the matter.

"We are accustomed to grant these [benefits] freely, since they appear to promote the study of religion, and to excite piety and faith towards this Apostolic See.

Indeed, recently, a pious association of both sexes has been established in Our Alma City under the title and patronage of St. Peter the Apostle, with the intention of assisting the Holy See, especially in this difficult time, through prayers and works. The prayers of this same pious association have been presented to Us, so that We might erect it as a primary association, or an Archconfraternity, with the same faculties and with the same institutes as existing associations everywhere, and to grant it the same indulgences that it enjoys by Apostolic concession.

Therefore, We hope that abundant fruits of piety will be derived from this association for the good of religion, and We have deemed it fitting to grant these requests. And so, by Our Apostolic authority, We erect and establish the aforementioned association of both sexes, established in the City under the title and patronage of St. Peter the Apostle, as an Archconfraternity, and We decree that the association, as an Archconfraternity, shall be..."

[*Latin ed. p. 536*]

536. CONCERNING. "The designation of gates, which may vary according to the will of those responsible, for various purposes." II. "Whether the prayers, monthly stipends, etc., which are to be offered for the granting of Plenary Indulgences, as conceded by the Brief of October 31st, should be those prescribed in the Statutes of the Roman Archsodalitas." III. "Whether the Statutes of a Sodalitas already aggregated to the Roman Archsodalitas can be reformed, with the consent of the Ordinary, in matters pertaining to

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prayers and works, without a new decree of aggregation being requested from the Roman Archsodalitas."

RESOLUTION. – The Holy Congregation for Indulgences and Sacred Relics, having considered the matter, on December 9th, 1862, responded as follows: I. Affirmative. II. Negative. III. Affirmative.

Notes of the Consultor. The question was considered by the Consultor to be sufficiently and thoroughly resolved, based on the well-known Constitution of Clement VIII; so that there was scarcely any room for doubt. In the aforementioned Constitution, dated December 7th, 1604, it is decreed concerning the statutes of Confraternities, as follows: "The statutes concerning the governance of Orders, Religious Institutes, and Institutions, whether erected and established, or aggregated, or Archconfraternities and Congregations, and those concerning the granting of privileges and other matters, cannot be imposed upon Confraternities and Congregations erected, established, and aggregated, unless they have first been examined by the Diocesan Bishop and approved for the needs of the place; nevertheless, we grant and concede to the primary, or official, members the faculty of aggregating to themselves other existing Sodalitas, wherever they may be, with the consent of the Ordinaries, and of communicating to them all and each of the Indulgences and relaxations of penalties, whether plenary or partial, which are directly granted by this Apostolic See. This we grant and concede, notwithstanding any contrary provisions, even if specifically mentioned, to the contrary."

Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 1st of November, in the year 1862. In the 15th year of Our Pontificate.

In place of the Seal, G. CAÏD. DI GEINGA.

[*Latin ed. p. 537*]

UTINEN. 537 "That they remain subject to the decrees, and the moderation, and the correction of the Bishop in all things." Furthermore, the Brotherhood of Ferraris, in its statutes, article 6, number 37, writes: "Regarding the change of statutes, frequent questions arise concerning the Trinitarian [Order]. The rule is that the Ordinary can change them; Monacen," in the formulary of Canon Law, page 21, note to form 1, number 49." Indeed, in establishing the statutes for any sodality, provided that the substantial purpose of that sodality is generally maintained, the rest is entirely subject to the moderation or correction of the Bishop. In our case, however, it was affirmed that the principal purpose of both the Archiconfraternity and the aggregated Confraternity is entirely the same, namely, to aid the Holy See through prayers and works; and this, indeed, is in accordance with the words of the Supreme Pontiff in the decree of erection, namely, that the sodality "has the purpose of aiding the Apostolic See through prayers and works, especially in this difficult time." Furthermore, the Archiconfraternity existing in Rome has established certain statutes for the good order

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and governance thereof, in which the manner of aiding the Holy See by the confreres is declared and proposed: they decree that the confreres should daily recite one Our Father, one Hail Mary, and one Glory Be, and one Creed, and that they should assist the Holy See with its temporal needs through monthly offerings. The statutes of Utinensia, however, differ from those of the Romans in that they do not prescribe any specific prayers or monthly offerings, but rather that the faithful, according to the words of the Apostolic decree, aid the Holy See through prayers and works, or alms, as each judges fitting according to his devotion. It is easily seen that this is done in accordance with the law, according to the article of the Clementine Constitution mentioned above. Regarding the second doubt, the Consultor continued, the recitation of those prayers, for which an Indulgence is granted, is not a necessary condition, nor is it considered as such in the statutes of the Archiconfraternity; therefore, a confrater who omits those prayers does not gain those indulgences, but he does not cease to be a member of the Confraternity; and therefore, he obtains the other Indulgences attached to other good works. From what has been said, the solution to the third doubt also follows. Since, therefore, the entire question revolves around the change of statutes; although those changes do not conform to what is derived from the Constitution of Clement VIII, it is evident that what is read in...

[*Latin ed. p. 538*]

538. Concerning the statutes of the Archiconfraternity, as found in Title III, regarding Aggregations (1), where full authority is granted to Ordinaries of any order and form to establish their own Confraternities, etc. These statutes, moreover, having been approved by the Most Holy Congregation of Bishops and Regulars, it seemed that nothing more could be desired. From these, the following are deduced: I. Provided that the ultimate purpose of a sodality remains firm, the statutes pertaining to its order, prayers, and the manner of performing works that contribute to that purpose, are within the prudent judgment of the Bishop, according to the nature of the persons and places. II. It is not necessary, in order to gain indulgences, that an aggregated sodality follow the statutes, prayers, and manner of performing works of the Archiconfraternity; for it is not through these, but through the purpose which the sodality has established for itself, that its members are considered aggregated and are granted the same indulgences. III. If indulgences are attached to particular prayers, or to a certain prescribed manner of performing works, then members, if they do not fulfill these requirements, will not gain those indulgences, except by reason of a deficiency in the prescribed work.

FROM THE CITY AND THE WORLD. From an audience granted by the Most Holy Father on September 18, 1862. DECREE. — "It is customary for Pastors of Souls to administer the Most Holy Sacrament of the Eucharist, in

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some cases, only within the year, during the principal feasts, to the faithful who are habitually infirm, chronic, and, due to a permanent physical impediment, are unable to leave their homes. Consequently, these faithful are deprived of all the Plenary Indulgences which they would obtain if, having fulfilled the prescribed conditions, they could more frequently approach the Sacred Eucharistic Table." (1) See Appendix XVI.

[*Latin ed. p. 539*]

DECREE. Numerous pastors of souls, and many other ecclesiastical men, presented the most humble petitions to the Most Holy Pope Pius IX, that he would deign to provide for this matter through his apostolic benevolence; and having, through me, presented the following document to the Substitute of the Sacred Congregation for Indulgences, I gave a faithful account of all these matters in an audience held with His Holiness on September 18, 1865. Considering the spiritual benefit to the flock entrusted to Him, His Holiness, with clemency, granted that the aforementioned faithful, with the exception of those who reside in communities, may acquire all and each of the plenary Indulgences already granted, or to be granted in the future, and may acquire other Indulgences in the places where they live, as if they were not in that physical condition, for the acquisition of which the Holy Communion and the visitation of a church or public oratory are prescribed in those same places, provided that they are truly penitent, having confessed, and having fulfilled all other conditions, if any have been prescribed; in place of the Holy Communion and the visitation, other pious works should be assigned by the respective confessor, which they faithfully fulfill. This decree is valid forever, without any brief being required. Notwithstanding anything to the contrary. "Given in Rome, from the Secretariat of the Sacred Congregation for Indulgences and Holy Relics." Signed, F. Card. ASQUINIUS, Prefect. Archp. PRINZIVALLI, Substitute.

[*Latin ed. p. 540*]

540 TURRITANA*. November 28, 1855. DECREE. Although throughout the entire region of Sardinia, and especially in the Province of Turritana, the devotion of the faithful towards their patrons, namely the Saints Gavinius, Protus, and Ianuarius, has always shone brightly, as the ecclesiastical monuments testify, for whose bodies, as these monuments attest, the Christian inhabitants placed within the church consecrated in their names, there remained only one thing to further increase the faith of these same faithful in these Martyrs, namely, that the sacred relics of the same Martyrs might be found in the very place where the church is located. Therefore, the modern Bishop of Turritana, the Reverend Father Dominic Alexander Varesini, happily fulfilled what had been desired: in the year of salvation 1848, after the places beneath the altar of the lower sanctuary, which is located in the renowned and ancient Basilica of Turritana dedicated to these

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same holy Martyrs, had been excavated, and after all due precautions had been observed, according to the prescriptions of both the Sacred Council of Trent and the Decrees of this Sacred Congregation for Indulgences and Sacred Relics, the bodies of these same Saints were found, each one distinctly marked with its own name, and these were authentically recognized, as is sufficiently and abundantly evident from the authentic proceedings presented to this Sacred Congregation. Therefore, the aforementioned Sacred Congregation, which presides over indulgences and sacred relics, approved the aforementioned proceedings and ordered that they be recorded in the acts of the same Sacred Congregation.

Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on November 28, 1855.

F. Card. ASQUINIUS, Prefect.

A. ARCHIP. PRIISZIVALLI, Substitute.

[*Latin ed. p. 541*]

541 DECREE. A more detailed account, drawn from an approved process, demonstrates that a firm and constant tradition existed concerning the existence of those same sacred Relics, although documents were lacking that would specifically indicate the place where these were deposited in the illustrious Basilica. Therefore, what had long been hoped for was happily accomplished by the Archbishop of Turritana. With no effort spared, and with a certain account written in the Spanish language before his eyes, which had been printed in Madrid in the year 1514, at which time the search for these Relics had also been undertaken, the Archbishop, through his delegates, initiated a new investigation, with all acts meticulously described by the Episcopal Chancellor, and confirmed by the signatures of numerous witnesses. After excavations in the chapel, which is located beneath the illustrious Basilica, specifically beneath the altar that exists in that same chapel, an urn was finally discovered, which contained the following twelve leaden capsules, each bearing inscriptions on small plates: on the first was written: "RELIQUIAS DE LA 2 RODOMA" – on the second: "RELIQUIAS DELLA 1* ROOOMA DONDE SE ALLÒ LA ESPIa NOLA DE 8 PLATA" – on the third: "S. INCOGNIT*" – on the fourth: "S. INCOCNIT-". These four capsules were located on the Epistle side. On the Gospel side, in the first was written: "S. INCOGNIT" – in the second: "B COMITA REX" – and on the third and fourth, only a small plate with two lines of letters was present, in which the first line clearly read: "RELIQUIAS" – the remaining letters, although in capital letters, could not be deciphered. In the other four capsules, on the first was inscribed: "S. GAUDETI EPS." – on the second: "S. IUSTINUS EPS." – on the third: "S. FLORENTI EPS." – and on the fourth: "S. LUXORI EPS." In the center of the urn was a rectangular capsule, one and a half palms wide; two palms high; and it bore a distinct plate, richly ornamented, and inscribed with more elaborate letters, in which was writ-

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ten: "S. GAVINUS M." – on the left side, on the Epistle side, was another capsule inscribed with: "S. IANUARIUS M." – and on the right side, on the Gospel side, a similar capsule was present, inscribed with: "S. PROTUS M. E P. 8 S S S".

[*Latin ed. p. 542*]

542 TURRITANA. The Archbishop, adorned in pontifical vestments, drew forth the sacred relics from these three capsules with his own hands, and transferred them to other, distinct capsules, sealed with their own names and seals; and finally, with great veneration and a large gathering of the faithful, these same relics were exposed for eight days in a rich urn, with solemn ceremony. Furthermore, the Archbishop, proceeding with the recognition of the holy relics, having brought forth other stones, found other capsules in other urns, in the presence of the Chapter and other witnesses, upon which, in addition to the indications of the holy Unknowns, were inscribed the following names: S. EOESI PRESBYTER; S. C O M. £5S°. N1A V. M.; © S. V. M.; B. M. MARTIN VENT S A. D. S GABIN CR1SPUL MDCXUII; S C1LI; S.; S. FELIX S ET CRESCENTIAN AMANTI DIACON E T HIC RECONDIT 8 s 8; S. S MARCELI/ M.; SANCT S 5 M.; S. M.; S. FORTUN*AT s PETROPISANA M. IN— A.D.MDCXXU. Finally, the same Archbishop, having completed the discovery and recognition, replaced the relics of the patrons that had been found in the same place from which they had been taken, taking all precautions to prevent them from being removed, and sealed the sacred treasure with his own seals.

[*Latin ed. p. 543*]

543 FROM THE HOLY CONGREGATION FOR RITES. REGARDING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, BROTHER RIGIDI, OF THE LAY ORDER OF THE DISCALCED CARMELITES, OF THE MORE STRICT PROVINCE OF SAINT PETER OF THE OBSERVANCE OF ALCANTARA, IN LECCE. DECREE. "At the request of the Most Reverend Father Brother Donato Antonio, of the Sacred Heart of Jesus, General Procurator of the Alcantarian Family, and Postulator of the cause of the aforementioned Venerable Servant of God, Brother Egidio Maria, of Saint Joseph, it was ordered by particular letters of the Holy Congregation of Rites in the year 1864 to the Ordinary of the dioceses of Naples, Taranto, Otranto, Lecce, and Ischia, that they diligently investigate, according to the instructions of the Promoter of the Holy Faith contained in those same letters, all and each writing attributed to the aforementioned Servant of God, whatever the title. Although the Ordinaries of the dioceses of Naples, Taranto, Lecce, and Ischia faithfully fulfilled the religiously given charge, no writing whatsoever was found attributed to the aforementioned Servant of God; nevertheless, those same Ordinaries did not fail to prepare diligent

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processes, which they sent, sealed and secured, to the Holy Congregation of Rites in Rome. In the Archdiocese of Otranto, the Most Reverend Ordinary found four letters of the aforementioned Servant of God, but they were written by another hand, since it is known that he himself was illiterate; these, together with the authentic process of the diligences carried out by him, were sent to the aforementioned Holy Congregation. Here is a list of the aforementioned letters, namely:"

[*Latin ed. p. 544*]

NAPLES. "Letter I. On the right-hand side of the first line, it has the letters I. M. Then, in the middle, Naples, March 1810. The day of the month is missing, as the paper is damaged at that point. Then, on another line, 'Dear brother Fr. Giacinto,' and immediately the letter begins with these words: 'I am pleased to hear...' This letter ends with: '...and I sign.' Then, 'I affirm, brother, and servant,' followed by 'Fr. Egidio of St. Joseph,' and then 'To the dear brother, Fr. Giacinto of St. Francis, Religious Professor of the Order of Alcántara,' in Lech, near Marfano, 'La Consolazione.'

"Letter II. At the top, this letter bears the letters J. M. 1, then in the middle of the same line: Naples, November 6, 1810. It begins: 'Reverend Lady,' and immediately follows on the same line, 'Woman of little faith.' At the bottom of the first page, these words are found: '...and the cursed, disordered...' The other page begins: 'disordered and scandalous,' and after three lines, it ends with the words: '...from Heaven.' Immediately following is 'D. V. S.' and at the bottom of the page, there is this inscription: 'Your unworthy and sinful servant, Fr. Egidio of St. Joseph, Lay Professor of the Order of Alcántara.' 'To Your Illustrious Lady, the Lady Donna Marianna Salvatore, in Lech, near Marfano.'

"Letter III. This letter has the usual letters L. M. L, then 'Naples, March 25, 1811,' on the first line. It begins with the words: 'Reverend Lady, D. Marianna,' 'I am pleased to hear that you are pregnant, together with your esteemed mother.' 'Your unworthy servant, Fr. Egidio of St. Joseph.' 'To Your Illustrious Lady, the Lady D. Maria Salvatore, in Lech, near Marfano.'

"Letter IV. In the middle of this letter, 'Naples, June 22, 1811.' It begins: 'Most Venerable Lady,' and immediately follows: 'After giving due thanks to God,' it continues: '...I proceed with due respect to submit myself.' 'To Your Illustrious Lady.' At the bottom is the inscription: 'Your humble servant, Fr. Egidio of St. Joseph.'

"When the Most Eminent and Reverend Cardinal Alexander Barnabò, Promoter of this Cause, presented these letters today in the Ordinary Session of the Sacred Rites at the Vatican, after a careful examination of these letters, he found nothing that could impede the further progress of the Cause itself. The Eminent and Reverend Fathers entrusted with the preservation of the Sacred Rites, having also heard the voice of the Reverend

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Father D. Peter M., Promoter of the Holy Faith, decided to respond: 0 0"

[*Latin ed. p. 545*]

NAPLES. – Nothing obstructs the proceeding to further matters, nor can it be justly objected to the Promoter of the Holy Faith, reserving, as is fitting, what is rightfully reserved. February 9, 1867. "Afterward, a faithful report of the aforementioned matters was made to the Most Holy Lord, Our Pope Pius IX, and His Holiness approved and confirmed the Decree of the Sacred Congregation in all respects." February 14, of the same month and year. (Signed) C. E. P. Portuensis et S. Rufinae, Cardinal PATRIZI, S. R. C., Prefect of this Place. (Signed) D. BARTOLINI, S. R. C., Secretary. CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, FATHER ALPHONSO DE OROZCO, PRIEST, OF THE ORDER OF THE EREMITES OF SAINT AUGUSTINE, SPANISH PROVINCE. DECREE. – Since it is necessary to deliberate in the Ordinary Congregation of Sacred Rites concerning the validity of two Apostolic Processes instituted by the authority of the Holy See, regarding the miracles which are said to have been wrought by the Venerable Servant of God, Alphonso de Orozco, through his intercession, the aforementioned Cardinal, Prefect of this Congregation, having heard the Reverend Father Nicholas Primavera, Priest, Professor of the aforementioned Order, Promoter of this Cause, proposed the following question in the Ordinary Congregations of Sacred Rites held today at the Vatican. Acts, volume II, folio XXI, 36.

[*Latin ed. p. 546*]

546 TOLEDO. "Whether it is established by the Apostolic authority that the processes instituted, both in Madrid within the Diocese of Toledo, and in the City and Diocese of Interamna, concerning miracles, are valid, considering whether the witnesses were duly and properly examined, and whether the rights were legitimately compelled in the case, and whether they have the effect intended." Furthermore, the Most Reverend Fathers entrusted with safeguarding the sacred rites, having carefully considered everything, and having heard the Reverend Father D. Peter Minetti, Promoter of the Holy Faith, responded as follows: "After the sessions in which the matter of the exhumation and examination of the body of the Venerable Servant of God was discussed, it is advisable to consult with the Most Holy [Father] regarding the correction of the defects of both processes." February 9, 1867. "Subsequently, a faithful report on the aforementioned matters was made to the Most Holy Lord, Our Pope Pius IX, by the undersigned Secretary, and His Holiness deigned to graciously grant the correction of the defects of both processes." February 14, of the same month and year. L. * S. C. Episc. Portuensis et Rufinensis, Cardinal PATRIZI, S. R. C., Prefect. D. BARTOLINI, S. R. C., Secretary. FROM THE CONSISTORY ACTS. Febru-

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ary 22, 1867. Among other things, in the secret Consistory held on February 22nd, the following matters were discussed. The Most Holy Father, in a brief address, expressed his desire to add to the catalogue of Saints, Blessed Leonard of Port Maurice, an Apostolic Missionary of the Order of the Friars Minor of the Strict Observance, who is in retirement, and is in Rome, St. Bonaventure.

[*Latin ed. p. 547*]

FROM THE CONSISTORY ACTS. 547 Then the Most Holy Father wished that Cardinal Patrizi, who presides over the Congregation of Holy Rites, should briefly report on the cause of the aforementioned Blessed, so that the Most Reverend Cardinals might express their opinion on the matter. When he had done this, the same Most Holy Father asked them whether they thought it was possible to proceed to the solemn canonization of the aforementioned Blessed, to which they all individually answered: "It pleases us." Then the Most Holy Father made known his intention to proceed to the solemn canonization; and before this is done, he will take care to arrange other Consistories, in which he will ask not only the Most Reverend Cardinals, but also the Bishops who have been invited to Rome for other canonizations previously established, to give their vote, so that, in this matter of such importance for the Catholic Church, it may proceed with due deliberation. Furthermore, after the Allocution which we presented on page 44, he considered the situation of several churches which were without their pastors. Thus far, when we have spoken of the appointments of Bishops in our publications, we have indicated the names of those who have been appointed to the churches, and we have also mentioned something about the material condition of the churches. Henceforth, we will also be concerned to indicate something about the material condition of individual churches, which we will draw from the Consistory proposals, which are prepared by office (I). For the material condition of churches not only provides some knowledge of the diocese in question, but also provides material for comparing these dioceses with each other, and for knowing in what they agree or disagree. The present Consistory offers a suitable opportunity to address this matter, since, with a singular providence, many Bishops have been appointed. (1) A Consistory proposal will be called a "folium" (sheet), which is a document handed over to the printers containing a brief account of both the person to be appointed to the vacant episcopal see, and the material condition of the vacant church. Such sheets are distributed to the Most Reverend Cardinals before they attend the Consistory, so that they may learn, in a few words, what the Roman Pontiff intends to propose in that Consistory:

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hence the name given to these proposals.

[*Latin ed. p. 548*]

TO THE ECCLESIASTICAL CONSISTORY. TO THE PASTORS, REGARDING WIDOWS WHO WERE PRESENTED IN THE HOLY CONSISTORY BY THE MOST HOLY LORD OUR POPE. The Cathedral Church of Tusculum, vacant due to the death of His Eminence Anthony Mary Cardinal Cagiano de Azevedo, which church was desired by Nicholas, Cardinal Priest of the title of St. Peter in Vinculis, Claretian, Paracciani, having previously relinquished the aforementioned priestly title. Tusculum, formerly of Latium, now a town of the Roman Campagna, built on the slope of a mountain, is located twelve miles from Rome, and within its territory are approximately one thousand houses and about five thousand inhabitants. The Cathedral Church boasts the title of St. Peter the Apostle, is of good structure, and is immediately subject to the Apostolic See. Its Chapter comprises three dignities, of which the first, after the Pontifical, is the Archpresbyterate, with seventeen canons, eight beneficed priests, and other priests and clerics serving in divine offices. The care of souls belongs to the Chapter, and to the Archpriest, who is assisted either by one of the canons or by a priest chosen by the Chapter and approved by the Bishop, and this ministry is exercised in the Cathedral. It has a baptismal font, which is the only one in the town; a sacristy well equipped with all sacred furnishings; several relics of saints, decently preserved; a double choir; an organ; a tower with bells; and outside the town, a cemetery. The episcopal palace, located a short distance from the Cathedral, is a fine building. In the town, there is only one parish church; four monasteries for men, and two for women; four lay sodalities; also an orphanage, a hospital, a pawnbroker's, and a seminary. The diocese extends approximately four miles in all directions, and includes six towns. THE CATHEDRAL CHURCHES OF NEPI AND SUTRUM, are perpetually and canonically united. They became vacant due to the death of the Most Reverend Lawrence Signani, and the Reverend Julius Lenti, a Roman priest, was appointed to them; who, having been awarded a doctorate in sacred theology, distinguished himself in the performance of ecclesiastical duties, especially in administering the sacraments of confession to both sexes, and in preaching the word of God, either in sacred missions or in pious exercises. He was also a member of the school of humanities in the Pontifical Roman Seminary, among the professors of the theological academy, and among the extraordinary masters of pontifical ceremonies; finally, he was a canon and perpetual vicar in the illustrious Basilica of St. Lawrence in Damasus. The towns of Nepi, or Nepete, and Sutri are located

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in the province of the Patrimony of St. Peter. The first is built on a flat site.

[*Latin ed. p. 549*]

PROMOTIONS (The city encompasses over two hundred and fifty houses, and is inhabited by over two thousand people. The other, situated on a hill, extends for nearly one Roman mile in circumference, containing approximately three hundred houses and over two thousand inhabitants. The Cathedral Church of Nepeta is dedicated to the holy patrons of the city, Saint Peter and Ptolemy, and is a building of considerable age and recent construction. The church of Sutri, on the other hand, is dedicated to the Assumption of the Blessed Virgin Mary and to Saint Dulcissima, its patrons, and also boasts a fine building. Both churches are immediately subject to the Holy See. The Chapter of Nepeta consists of only one Archpriest, seventeen Canons with stipends, a Penitentiary, a Theologian, and three Beneficiaries. The Chapter of Sutri also has one Archpriest, and fourteen Canons, among whom are a Theologian and a Penitentiary, as well as two Beneficiaries. In both places, there are also several other priests and clerics who minister to the divine offices. The pastoral care of souls is entrusted to each Chapter, which is exercised through its own parish priest, canonically appointed, elected, and approved by the Bishop. Both Cathedrals have a baptismal font, and the cemetery of Sutri, recently built outside the city. The Episcopal residences, located near the Cathedrals, are of excellent construction. In addition to the Cathedral of Nepeta, there are two parish churches without baptismal fonts, as well as two monasteries for men and one for women. In Sutri, there is one parish church, one monastery for men, and one for women; both have a hospice, several lay sodalities, a pawnshop, and a seminary. The united dioceses extend for approximately seventy Roman miles, and contain over sixty locations.

HISTORICAL. The Cathedral of Montafalci is vacant due to the death of the Reverend Aloysius Iona, and the Reverend Joseph Maria Bovieri, a priest of the diocese of Ferentina, has been appointed to it. He holds doctorates in sacred theology and in both civil and canon law, and has been appointed by His Holiness, from the innermost chambers, as Apostolic Protonotary ad instar Participantium, having previously served in Switzerland in the affairs of the Holy See, and is currently among the Beneficiaries in the patriarchal Basilica of the Vatican. Montafalci is a town in the province of the Patrimony of Saint Peter, situated on a hill, with a circumference of approximately one Roman mile, containing a thousand houses and seven thousand inhabitants. The Cathedral church is dedicated to Saint Margaret, and is a fine building, immediately subject to the Holy See. Its Chapter consists of three dignitaries, the first of which, after the pontifical office, is the Dean, followed by nine Canons with stipends, twelve Beneficiaries, and other priests and clerics who serve in the divine offices. The care of souls is entrusted to the Chapter, and is exercised in the Cathedral by

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the Dean, assisted by a Canon appointed by the Chapter, where there is a baptismal font, a sacristy adequately furnished with all sacred furnishings, and among the many relics, the head of Saint Margaret, the titular saint, is religiously preserved, along with the choir, and a cemetery outside the city. The Episcopal palace, located in front of the Cathedral, is of the finest and most elegant construction. In addition to the Cathedral, there are two other parish churches in the same city, without baptismal fonts, as well as three monasteries for men and two for women, several lay sodalities, a convent for young girls, a hospice, a pawnshop, and a seminary. The territory of the diocese extends for approximately eighteen Roman miles, and contains several locations.

[*Latin ed. p. 550*]

550 CONSISTORY PROMOTIONS. The cathedral churches of Recanati and Loreto are perpetually and canonically united through the translation of Reverend Father Joseph Cardoni to the Archiepiscopal Church of Edessa, located in lands of the infidels. To fill the vacancy, Reverend Thomas Gallucci, a priest of the Ancona diocese, was promoted. He has distinguished himself in ecclesiastical functions, particularly in the administration of the sacraments, the hearing of confessions, and the preaching of the divine word, having received a doctorate in sacred theology and canon law. He is appointed as the Cathedral Canon of Imola, and as Vicar of that city and diocese. He has also fulfilled the duties of General Vicar and has been appointed as an honorary member of the papal household. Recanati and Loreto are towns; the former contains six hundred houses and nine thousand inhabitants within a radius of one mile; the latter, renowned for its most sacred shrine of the Blessed Virgin Mary, encompasses five hundred houses within a radius of almost one mile and is inhabited by eight thousand people. The Cathedral of Recanati is dedicated to Saint Flavius, and the Basilica of Loreto is dedicated to the Blessed Virgin Mary; both are immediately subject to the Holy See. The Chapter of Recanati comprises four dignitaries, the first of which, after the pontifical office, is the Prebend, followed by sixteen Canons with their respective prebends, and fourteen Beneficiaries. The Chapter of Loreto comprises five dignitaries, the first of which is the Archdeaconate, followed by nineteen Canons, a College of Penitents, twelve Beneficiaries, and twelve Clerical Beneficiaries. In both churches, several priests and clerics minister. The care of souls in the cathedral of Recanati is exercised by a Beneficiate-Altarist, while in Loreto, it is managed by the Chapter and two Beneficiaries, who can be removed at the Bishop's discretion. Both churches have a baptismal font. Adjacent to the cathedral churches are houses for the Bishop's residence. In addition to the cathedral, Recanati has four parish churches equipped with baptismal fonts, one of which is also a collegiate church; there are also several monasteries for men and women, some lay sodalities, a hospital, a pawnshop, and

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a seminary. Loreto, on the other hand, has no other parish church, but only a few religious houses for men and women, one conservatory, some lay sodalities, two orphanages, a pawnshop, and a college. The united dioceses extend over thirty miles and encompass several locations.

The cathedral church of Senigallia is vacant due to the death of the Reverend Father Dominic, a member of the clergy, Cardinal Lucciardi having passed away outside the Roman Curia. Reverend Father Joseph Aggarbati, a priest of the archdiocese of Fermo and a professed member of the Order of St. Augustine, has been promoted to this position. He had previously held several distinguished offices in Perugia and was eventually appointed General Procurator of the entire Order, and was also co-opted into the College of Theological Faculties at the Roman Archgymnasium. Senigallia, also known as Sena Gallica, is a town in Umbria, located beyond the Apennines, near the border of the March of Ancona, and built on a plain near the mouth of the River Esino, overlooking the Adriatic Sea. It has a circumference of approximately two miles and contains two thousand two hundred houses, including the suburbs, and is inhabited by nearly ten thousand citizens. The cathedral church, dedicated to Saint Peter the Apostle, is a modern building and serves as a suffragan to the Archbishop of Urbino. Its Chapter consists of three dignitaries, the first of which, after the pontifical office, is the Archpriest, followed by seventeen Canons with their respective prebends, thirteen Mansionaries, and other priests and clerics who minister.

[*Latin ed. p. 551*]

PROMOTIONS: The habitual care of souls rests with eight senior Canons, and through a priest elected by these same Canons and approved by the Bishop, and assisted by two chaplains, it is exercised in the Cathedral, where there is a baptismal font, the only one in that city; the sacristy is richly furnished: there are many relics, and foremost among them, the arm of Saint Paulinus, Bishop of Noli, and patron of that city, donated to this church by the Most Holy Lord and hidden there with great reverence; there is also a choir, an organ, etc., and a cemetery. The Episcopal palace, located near the Cathedral, is quite spacious and of excellent construction. In addition to the Cathedral, there are two other parish churches in Sinigaglia; there are three monasteries for men in the city, and two outside the city; there is also one monastery for women, and furthermore, a college, a conservatory, several lay sodalities, an orphanage, a hospital with an attached maternity ward, a pious fund, and other charitable institutions, and a seminary with students. The extent of the diocese extends to fifty thousand paces, and encompasses many places.

CATHEDRALS OF SAVONA AND NOLİ: These two cathedrals are perpetually and canonically united, having been vacant due to the translation

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of Reverend Father Alexander Riccardi from Netro to the Metropolitan See of Torino. Reverend Father John Baptist Cerruti was promoted to the diocese of Savona, who diligently performed ecclesiastical duties; he was appointed General Vicar with honor, and in both the dioceses of Alatrina and Sinigaglia. He also served as Apostolic Administrator of the diocese of Pesaro. Among the domestic prelates and Protonotaries Apostolic supernumeraries of the Most Holy Lord, he was also appointed Apostolic Delegate of Urbevetana, and to the Supreme Tribunal.

HISTORICAL: The Signatory of Justice had resigned. Savona and Noli are cities in Liguria, the former built on a flat area near the Tyrrhenian Sea, with a circumference of approximately three thousand paces, and together with its suburbs, it contains nearly one thousand houses and is inhabited by almost fifteen thousand people; the latter is located on the western coast of Liguria, on a plain, and encompasses over three thousand inhabitants. The Cathedral of Savona is dedicated to the Blessed Virgin Mary, assumed into heaven; the Cathedral of Noli is dedicated to Saint Peter, the Prince of the Apostles; both are suffragan to the Archbishop of Genova. The Chapter of Savona consists of four dignitaries, the first of which, after the pontifical office, is the Praepositus, with eight canons and eight chaplains provided from the revenues; the Chapter of Noli consists of only one dignity, that of Archpriest, with seven canons without theological or penitential duties, and some benefices; in both, other priests and clerics serve the divine ministry. The care of souls rests with each Chapter, which is administered by a parish priest elected by the Chapter and approved by the Bishop in Savona, and exercised by the Archpriest in Noli. In both Cathedrals, there is a baptismal font, etc., and specifically, among the relics of the Cathedral of Savona, are the bodies of Saint Xystus, Pope and Martyr, and Saint Octavian, Bishop of that city; in the Cathedral of Noli, there is the body of Saint Eugenius, Bishop and patron of that city. The Episcopal palace of Savona is adjacent to the Cathedral, and the Episcopal palace of Noli is somewhat distant from its Cathedral. There are three other parish churches in Savona, all with baptismal fonts; there are six monasteries for men, and two for women; there are three conservatories, two hospitals, a pious fund, and for both dioceses, a seminary; in Noli, there is only a hospital and a pious fund.

[*Latin ed. p. 552*]

552 CONSISTORIAL PROMOTIONS. Dioceses united with those extending to more than thirty leagues encompass a vast territory and include numerous locations. The CHURCH CATHEDRAL of Saint Minias was proposed to be filled due to the death of the venerable memory of Bishop Francis Mary Alli-Maccaroni, to which the Reverend Hannibal Barabesi, a priest of the diocese of Grosseto, was promoted. He, having received a doctorate in sacred theology, commendably exercised himself in ecclesiastical offices; he resigned from the position of Canon theologian

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in the Cathedral of Grosseto, and diligently taught moral theology to the clergy there, and until that See became vacant, he performed the duties of the Chapter's Vicar. Miniatura, or Fanum of Saint Minias, is a city of Etruria located on a hill near the Arnum river, between the cities of Florence and Pisa, which, within its circumference of more than two miles, contains eight hundred houses and three thousand inhabitants. The Cathedral church boasts the title of the Blessed Virgin Mary, assumed into Heaven, and is a suffragan to the Archbishop of Florence. The Chapter of that church has only one dignity, namely the Prebend, in addition to twelve Canons with both prebends, ten Chaplains, and other priests and clerics. Through the Prebend, to whom another priest, called the Chaplain-Curate, provides assistance, the care of souls is exercised in the same Cathedral, in which there is only one font for baptism for that city, and among the relics of the saints, the body of Saint Concordius is religiously preserved. Nearby the cathedral are the episcopal buildings, and outside the city is the cemetery. In addition to the Cathedral, there are four parishes in that city: three monasteries of men, several lay sodalities, one conservatory for women, a hospital, and a seminary; however, a house of piety is desired. The extent of the diocese reaches approximately one hundred leagues and contains ninety parishes. The CHURCH CATHEDRAL of GROSSETO was vacant due to the death of the venerable memory of Bishop John Dominic Mensini, to which the Reverend Father Anselm of Saint Aloysius, a priest of the diocese of Prato and of the Order of Discalced Carmelites, was promoted, who, in the performance of ecclesiastical functions, excelled greatly: he held the offices of Lecturer in sacred theology, Provincial Definitor, and General Definitor in his Order, and also resigned from the position of Synodal Examiner for the archdiocese of Florence. Grosseto, or Roseto, is a city of Etruria located on the right bank of the Umbronis river, built in a flat and maritime location, and within its circumference of approximately one mile, it contains nearly five hundred houses, and is inhabited by almost three thousand citizens. The Cathedral church is dedicated to Saint Lawrence, a deacon and martyr, and is a suffragan to the Archbishop of Siena. Its Chapter consists of one Prebend, eleven Canons with both prebends, a Sacristan, eight Chaplains, and other clerics who serve God there. Through the Prebend, the care of souls is exercised in the Cathedral, in which there is only one font for baptism for that city, and among the many sacred relics, the bodies of the saints, namely the martyrs Adrian and Felician, are decently preserved; the episcopal palace is somewhat distant from the Cathedral, and the cemetery is outside the walls. In addition to the Cathedral, there is no other parish in Grosseto, nor a monastery of men or women, nor a house of piety, nor a seminary, but there are three lay sodalities. The extent of the diocese reaches approximately sixty leagues, and it contains many parishes. The CHURCH CATHEDRAL of AREZZO was vacant due to the death of the

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venerable memory of Bishop...

[*Latin ed. p. 553*]

PROMOTIONS: The Reverend Father Joseph Giusti, a priest from Pisa, was promoted to the position of Attilio Fiascaini. He holds a doctorate in both Canon and Civil Law, and has diligently served in ecclesiastical functions, particularly in preaching the Word of God and administering the sacraments of confession to the faithful. For many years, he taught ecclesiastical history at the theological academy of Saint Catherine. He was also a censor for the Archbishop's Curia, and is currently a Canon theologian and pro-synodal examiner.

Arezzo, an ancient city of Etruria, partially built on a mountain and partially on a plain, has a circumference of approximately three Roman miles, contains over one thousand six hundred houses, and is inhabited by approximately twelve thousand citizens. The cathedral, of Gothic design, is dedicated to Saint Peter the Apostle and is immediately subject to the Holy See. Its chapter consists of four dignitaries, the first being the Prebend, and includes eighteen Canons with both spiritual and theological duties, eight Mansionaries, and other priests and clerics. The care of souls in the cathedral is exercised by a Canon chosen by the chapter and approved by the Bishop, and includes a baptismal font, a sacristy richly furnished with all sacred vessels, and among the sacred relics, the bodies of Blessed Gregory the Pope and Saint Donatus, the Bishop and patron saint of the city, are devoutly preserved. Outside the city walls is a cemetery. The Episcopal palace stands opposite the cathedral. There are thirteen other parish churches in Arezzo, all equipped with baptismal fonts, and one of them, dedicated to Saint Mary of the Parish, is also a collegiate church. There are five monasteries for men and seven for women, as well as numerous lay sodalities, a hospital, a seminary, and other institutions serving the diocese. A college is needed, and a house of piety is desired. The territory of the diocese extends for approximately one hundred Roman miles and includes more than three hundred and sixty parishes, as well as other places.

CATHEDRAL CHURCHES OF LUNA, SARZANA, AND BRUGNATO: These churches are perpetually canonically united, having become vacant due to the death of the Reverend Father Francis Agni, to whom the Reverend Joseph Rosati, a priest from Siena, was promoted. He diligently performed his ecclesiastical duties, and held the dignity of Dean in the cathedral of Arezzo, and has until now fulfilled the duties of the Capitular Vicar of the vacant See of Arezzo. Luna, to which Sarzana succeeded in the episcopate, is a city of Etruria located on the border of Liguria, near the mouth of the Macra River. It has a circumference of approximately one Roman mile, contains about two thousand houses, and is inhabited by over eight thousand people. Brunetum, or Bruniacum, a city in Liguria, built near the Votrum River and the foothills of the Apennines, has a population

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of approximately five hundred. The cathedral of Sarzana is dedicated to the Assumption of the Blessed Virgin Mary and is immediately subject to the Apostolic See. The cathedral of Brugnato is dedicated to Saint Peter the Apostle and is a suffragan of the Archbishop of Genoa. The chapter of Sarzana includes two dignitaries, the first being the Archdeacon, and fourteen Canons with both spiritual and theological duties. The chapter of Brugnato consists of only one dignity, that of Archdeacon, and seven Canons without a theologian or penitentiary. Both chapters have other priests and clerics who serve in the divine ministry. The care of souls is entrusted to each chapter, and in Sarzana, it is exercised in the cathedral by two Curates chosen by the chapter and approved by the Bishop, although a baptismal font is also kept in the nearby church of Saint Andrew the Apostle, and the care of souls in the church of Brugnato is exercised by one of the Canons with a baptismal font.

[*Latin ed. p. 554*]

554 CONSISTORY PROMOTIONS. The administration of Sarzana is handled by the diocese, not Brunet. The sacristy is adequately equipped with sacred furnishings, and among the sacred relics, a portion of the arm of St. Andrew the Apostle is reverently preserved. The episcopal palace of Sarzana is not far from the cathedral, while Brunet's cathedral is adjacent to it. Besides the cathedrals, no other parochial or collegiate churches are found; however, Sarzana has three monasteries for men, several lay sodalities, a hospital, a pawnbroker, and a seminary for both dioceses. Brunet, on the other hand, has one monastery for men and one lay sodality. The united dioceses extend approximately fifty miles and encompass numerous locations.

THE ARCHIEPISCOPAL CHURCH OF CATANIA was elevated to this honor by apostolic letters dated September 8, 1859, which begin: "The Roman Church is the mother of all churches; it is vacant due to the death of the venerable memory of Archbishop Felix Regnano. The Reverend Joseph Dusmet, a priest of Palermo and a professed member of the Order of St. Benedict, of the Cassinese Congregation, has been promoted to it – who has excelled in performing ecclesiastical duties, especially in preaching the Word of God; he is a professor of philosophy and sacred theology in his order, and was formerly Prior at Naples, at the churches of St. Severinus and St. Cosmas, and later appointed to the church of St. Flavius in the city of Caltanissetta, and has also relinquished his position as Abbot of Catania at St. Nicholas of Arethusa, until now." Catania, a city in Sicily, watered by the Amenes river, is located in the Demona valley, at the foot of Mount Etna, on the coast of the Ionian Sea, and has a circumference of approximately five miles, containing more than nine thousand houses, and is inhabited by more than sixty thousand citizens. The ancient cathedral, dedicated to St. Agatha, and bearing the title of "V. and M.," was, according to previous

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apostolic letters, adorned with the honor of an archbishopric and is immediately subject to the Holy See. Its chapter consists of five dignitaries, the first being the Prior, followed by twelve canons, each with their respective duties, namely a penitentiary and a theologian. There are also twelve minor canons, six beneficed priests, four chaplains, that is, masters of ceremonies, and other priests and clerics who serve in the divine ministry. The care of souls in the archiepiscopal church is exercised by a priest-chaplain, elected and approved by the archbishop, where there is a baptismal font, etc., and among the sacred relics, the body of St. Agatha, the patron saint of the archdiocese, is most reverently preserved; outside the city, there is a cemetery. The palace of the bishop is adjacent to the archiepiscopal church. Eight other parochial churches are listed in Catania, all equipped with baptismal fonts; one of them, St. Mary, called "of Charity," is also collegiate. There are fourteen monasteries for men and six for women, approximately sixty lay sodalities, two hospitals, two pawnbrokers, and a seminary. The archdiocese has a very extensive territory.

THE CATHEDRAL CHURCH OF GATTELLI NENNOREN was vacant due to the death of the venerable memory of Bishop Emmanuel Morongiu, and the Reverend Father Salvatore Angelo Demartis, a professed member of the Order of Our Lady of Mount Carmel, of the ancient observance, a priest of the Turritana archdiocese, and a Doctor of Sacred Theology, who has diligently performed ecclesiastical duties; he was the director of the monastery of studies at the church of St. Mary Transpontine in Rome, a professor of moral theology in the Roman archigymnasium, a consultant with the Holy Congregation of the Universal Inquisition, and was also entrusted with other extraordinary ecclesiastical affairs, and was also among the examiners of the Roman clergy.

[*Latin ed. p. 555*]

PROMOTIONS. The episcopal residence of the Diocese of Galtelli, due to the unhealthy air and the small number of citizens, has long remained in the city of Nora, which is located in Sardinia, above a mountain, in a very favorable location, with a circumference of one Roman mile, containing almost six hundred houses and inhabited by approximately four thousand people. The cathedral church of Nora, dedicated to the title of the Holy Mary of the Snows, is a recently constructed building and serves as a suffragan to the Archbishop of Cagliari. Its chapter consists of one Archpriest, eight Canons with prebends, two beneficed priests, and other priests and divine servants. The Archpriest, to whom the aforementioned Canons provide assistance, exercises pastoral care in the cathedral, where there is a baptismal font, etc. In the vicinity of the cathedral, the residence for the Bishop is visible. Besides the cathedral, there is no other parish church, nor a hospital, but there is one monastery for men, several lay sodalities, a pawnshop, and a seminary. The diocese is extensive and encompasses

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more than twenty locations.

THE CATHEDRAL CHURCH OF TARANTASIA is vacant, having been left free and spontaneously by the Reverend Father John Turinaz, as permitted by the Holy See, to which the Reverend Francis Gros was promoted by the benevolence of the Holy See, at the suggestion of the Most Serene Emperor of the Gauls. He was previously promoted as a priest in the Archdiocese of Chambéry, who diligently performed ecclesiastical duties. (Followed by CONSISTORIAL DOCUMENTS).

In the Archdiocese of Chambéry, the Reverend Francis Gros, who had previously served as a parish priest, Canon, and General Vicar in the same Archdiocese, has resigned. Tarantasia, or Forum Claudii, now commonly called Moutiers, is a city in Savoy, located on the Isère River, inhabited by approximately two thousand two hundred people and more, currently under temporary French administration. The cathedral, a spacious building of mixed construction, boasts the title of Saint Peter the Apostle, and serves as a suffragan to the Archbishop of Chambéry. Its chapter includes three positions, the first being the Prefect, followed by seven Canons, including one Penitentiary, and two beneficed priests, as well as other priests and clerics dedicated to divine service. The pastoral care is exercised in the cathedral, where there is a baptismal font, etc., by a Canon who holds an honorary position and is designated as the Archpriest. Among the sacred relics, the arm of Saint Peter, formerly the Archbishop of Tarantasia, is decently preserved there. The cemetery is located outside the city. The episcopal palace is adjacent to the cathedral. Besides the cathedral, there is no other parish church; there is one institute for men and another for women for the education of boys and girls; a hospital; several lay sodalities; and a larger and smaller seminary; however, a pawnshop is lacking. The extent of the diocese is quite broad, encompassing more than seventy-four locations.

[*Latin ed. p. 556*]

556 APPENDIX XVI. STATUTE OF THE ARCHDIOCESAN CONFRATERNITY OF SAINT PETER THE APOSTLE, EXISTING. Following the resolution concerning the Udine Confraternity of Saint Peter, dedicated to prayer and Christian works, and because, in this, the Apostle and the Apostles themselves, as is known from the form of the Brief mentioned above on page 537, have given an example, if we have conceived a complete plan to establish a Statute (which, because you have loved us as your brothers, we must present here; we translate the Italian into Latin), let us pray: that the Lord may grant strength to the confraternities of the same name, and may provide them with light, and that full knowledge of this matter may be provided not only to readers who might be opposed by incredulity, and who might harbor a spirit of indifference, but also that some example may be presented, so that, if a similar Confraternity should be established in

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some place, it may be able to teach and exemplify.

Furthermore, let us pray that the Faith may be extended to places where it does not yet exist, and that it may flourish and be strengthened in places where the minds or hearts of men are running towards error.

Finally, let us pray that God may protect the Holy See, that Catholics may not abandon the Faith, and that there may be many who, through their counsel and through the supreme authority of the Church, and through the omnipotent hand of God, may sustain the Religion through its Vicar here on earth, according to what has been prescribed.

In order to restrain the flood of evils to some extent, and to confirm the beginnings of pious endeavors, so that a great number of good men may be able to proceed safely amidst the storms, by which the mystical ship of Peter is now more than ever tossed and shaken, the Holy Father, through Apostolic Letters dated October 31st and November 1st, 1860, deigned to establish an Archdiocesan Confraternity under the title and patronage of Saint Peter, whose principal purpose is:

[*Latin ed. p. 557*]

x xvi. 957. By this temporal loss, concord among Christian princes is diminished, and difficulties arise in governing the Christian flock, in eradicating heresies, and in the exaltation of the Church. For every goal to be achieved, all who wish to contribute to that same end through pious works are invited. Hence, those who wish to participate in the Holy Union will, through the intercession of the Society, receive, for three hundred days, an indulgence, to the extent that each, according to his social condition, is permitted, and the piety of their own hearts suggests.

2. "These indulgences are granted, so that the example of those faithful men and their magnanimity may be followed, and so that the suffrage of the deceased may be applied, as if compelled by truth, to their own benefit.

3. "Every faithful person, whether of paternal or maternal lineage, may be admitted to the Society, and each is free to withdraw from it at his own will; for there is nothing in this Society that imposes an obligation.

4. "For the sake of works of piety, a statute has been drawn up, namely, concerning the extraordinary needs of the Archiconfraternity.

TITLE I. CONCERNING THE OFFICES OF THE ARCHICONFRATERNITY.

1. "The Archiconfraternity will take care that, in the respective parishes, those who collect these pious offerings are instructed to preface their prayers with the recitation of the Our Father, the Hail Mary, the Glory Be, and the Creed, daily, as shall be specified in the annexed register, so that, as is announced publicly each year, the sum collected annually, together with

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the same amount, will bring forth, for seven years, the sum of indulgences of quadragesimal length, provided that they are said with a contrite and devout heart. A plenary indulgence is granted to those enrolled in the Society on the following days: at the Cathedral of Saint Peter in Rome (January 18), at the feasts of Saints Peter and Paul (June 29), and at Saint Peter ad Vincula (August 1), provided that, on those days, they attend Mass in a public church, confess, and receive Holy Communion, devoutly offering their prayers according to the intention of Saint Peter, and making their offerings known.

5. "Anyone in Rome who wishes to make a donation to the Society may, at any time, publicly declare his will to one of the collectors, or to a member of the Council of the Archiconfraternity, and the collectors and councilors, during the general meetings held each month, will announce the names of those who have made such donations, as has been expressed in writing, namely, for..."

[*Latin ed. p. 558*]

558 APPENDIX 6. "Si quis extra Urbem directe archiconfraternitati Romanae xvi. 4. "Consilium, quandoquidem ad opus fuerit, coibit, non minus vero scribi velit, eumdem inter socios quam semel in mense; quod Praesi- cooptari nil prohibet. Oblator suum dens, aut, eo impedito, Vicepraesi- nomen, si velit, occultet, cum agi- dens convocat, eique praeest. tur de aliqua facienda per typos 5. "Res omnes dummodo moram- publicatione; opus tamen est ut ali- patiantur, quam significet sententiam vel pseu- et iuxta maiora suffragia resolven- donymum quod oblationi publican- tur. Suffragia publica et verbalia dae praefigatur. erunt, praeterquam 7. "Praeter preces et oblationes, officiis a Consilio discutientur dandis, si r agatur de vel personis sub- ii, qui inter adscriptos operibus scri- stituendis. Praesidenti ius est d u- bendis sunt idonei, laudabile erit si plicis suffragii dandi in suffragiorum tot illustrium Scriptorum paritate. vestigiis inhaerentes, sanctae Sedis iura tueri pro viribus conentur. Patresfami- lias optime se gerent si filios spe- ciali amore reverentia et obsequio s. Sedi devincire studeant. TITULUS II. DE GUBERNIO ARCHICONFRATERNITATIS. 6. "Singula acta per Praesidentem et Secretarium 7. "In subscribantur. Consilium adsciscantur probi honestique viri tam ecclesia stici quam laici, et munera Praesidentis Vicepraesidentis et Thesau- rarii semper laicis conferri poterunt, si electoribus libuerit. 8. "Coetus constans ex Praesiden- 1. "Societas subest auctoritati et regimui Eminentissimi in Urbe V i carii. te, aliis Officialibus, Consiliariis, 2. "Societatem moderatur Consilium quod constat Praesidente, Vicepraesidente, Thesaurario generali, et octo Consiliariis. Consilio adsistent Secretarius et Vicesecretarius. Negotia ad Societatem pertinentia inter Consiliarios peragenda dirhibebuntur. electiones per suffragia secreta d e- 3. "Praesidens, aliique Officiales et

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Consiliarii ad triennium officio et duodecim Collectoribus antiquioribus, elapso triennio, ad novas veniet. Qui pluribus suffragiis potietur, is electus censebitur. Prae sidens, Vicepraesidens, Thesau- rarius generalis et Secretarius g e- neralis ab Eilio Vicario erunt in officio confirmandi. 9. "In qualibet urbis Paroecia- unus aut plures Collectores consti- tuentur, qui duos libros asserva- fungentur: in quorum eo prius abscedere, rem ad Con- Confratrum et Consororum ad- scribent, in altero pecuniam menstruam solvendam ac solutam."

[*Latin ed. p. 559*]

xvi. 10. "Every member of the Council, even the Collector, is entitled to his due. Five gold gulden, if possible, are to be presented to the Prince on the day preceding the first of June." Any question concerning the sacred, solemn, and public collection of money, whether it pertains to the collected offerings or to the internal affairs of the society, shall be considered a matter of importance and shall be addressed with diligence. The Collector who dares to act otherwise may be deprived of his office. The reasons for this will be carefully explained. 12. "Offerings from communities shall not be scorned, but those of the Council, or the General Council, shall be preferred, as well as individual and nominal offerings; the offering may be made publicly, but it is permissible to publish the name of the giver, with the consent of the society, unless the actions of the Council prevent it. 19. "Although acts of piety are undertaken to provide for the needs of the Holy See in Rome, it is not necessary to publicly proclaim one's contribution; however, the President has the right to propose to the Council sacred functions, or religious gatherings, or other pious acts that are to be carried out in the community, with the consent of the Ordinary.

TITLE III.

CONCERNING AGGREGATIONS.

1. "The Archsodalitas enjoys the privilege of aggregating other sodalities, which have the same purpose, according to the Apostolic Letters in the form of a Brief dated November 4, 1860.

2. "The faithful outside the city who wish to be enrolled in a sodality in any diocese of the world, with the permission and guidance of the Ordinary, may establish a sodality or pious association that serves the same purpose, under the title of St. Peter. The Ordinary shall grant the greatest support and patronage to such sodalities.

3. "Whenever the Treasurer requires it, the Collectors shall submit a written account of the money received.

4. "On a day established by the President, with the approval of the Coun-

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cil, the President shall convene a meeting of the Collectors, preside over it, and moderate it; at this meeting, each shall give an account of the money received, which shall be deposited with the Treasury on the days immediately following.

5. "The value of the money collected shall be deposited in the papal treasury; a written testimony of this act shall be sent to the Supreme Pontiff each month by delegates who shall be the General Treasurer, alternately the President and Vice-Presidents, one from the Council, and two from the Collectors, as determined by lot.

6. "When God, whom we hope, will grant an increase to this Archsodalitas, it shall have the power, in any order, to form its own sodalities."

[*Latin ed. p. 560*]

3 6 0 APPENDIX XVI. Concerning the establishment. It will be more useful, for the sake of brevity, if the concession granted on the 4th of November, 1860, is stated as follows: "Regarding the administration of this Roman Archisodality, let those who wish to be part of it conform to its regulations, and it will include them, so that they may participate in all spiritual benefits according to the privilege granted to them, always respecting the authority of the Ordinary, according to the sacred canons and pontifical constitutions."

"DECREE. The Sacred Congregation of Eminent and Reverend Cardinals, entrusted with the affairs and consultations of Bishops and Regular Canons, having considered the aforementioned statutes of the Archisodality, erected in this esteemed city under the title and patronage of Saint Peter the Apostle, hereby approves and confirms them by this decree.

Given in Rome, from the Secretariat of the Sacred Congregation of Bishops and Regular Canons, "on the 19th of April, 1861."

N. Card. PARACCIANI CLARELLI, Prefect.

L. S. A. Archiep. Philippen, Secretary.

[*Latin ed. p. 561*]

FROM THE SACRED CONGREGATION, CONCERNING THE GUARANTEE. January 27, 1866. Session 25, page 11, regarding reforms. Livius was a debtor. He owed 1000 scudi, having obtained a loan secured by a mortgage on Livius's property. To pay off this debt, Livius arranged a different debt in the following manner: he obtained 800 scudi from the pious Sodalitas A, and 200 scudi from the Chapter B, so that with this sum of 1000 scudi, a productive loan was established, which would yield an annual interest proportionate to the portion held by both the Sodalitas and the Chapter, namely six scudi per hundred. Furthermore, Livius promised and obligated himself to return the entire sum within a period of four years, and thereafter, with the approval of the aforementioned pious institutions, but in such a way that whenever Livius wished to return the entire sum, either

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within the four years or after their expiration, he would be obliged to notify the aforementioned institutions of such restitution by a written notice three months in advance; otherwise, both the pious Sodalitas and the Chapter could refuse the restitution of the sum, without delaying the payment of the interest. It was also agreed that, if Livius were to delay in the payment of the interest, the Sodalitas would have the right to reclaim the entire sum even before the four years had elapsed. And Livius provided a guarantor, who obligated himself with these words: "N. N., as a solidary guarantor, obligates himself for the interest alone, jointly and severally with the aforementioned Livius, in favor of the pious Sodalitas and the Chapter, so that he is obligated in the same manner and form as Livius, until the complete and effective restitution of the entire principal of the productive loan." The pious institutions, both the Sodalitas and the Chapter, although they were obligated by agreement to enter into the old mortgage, *Acta, vol. II, section XXII, 37*.

[*Latin ed. p. 562*]

562. The aforementioned inheritance had been pledged as security for a loan, as was written; however, they neglected this, and instead sought to have a new mortgage recorded. But it happened that, due to other existing encumbrances on Livius's property, it was difficult for those same assets to serve as collateral, and the new debt did not seem to be fully secured. Furthermore, nothing had been stipulated in the instrument regarding Apostolic approval. Shortly thereafter, the Rectors of the Sodalitas, without any intervention from Livius, the debtor, or the guarantor, offered prayers to the Holy Father and obtained the grace of a remission and confirmation of the contract until the time limit expired at the discretion of the Ordinary. However, four years elapsed without any hope of Livius paying the debt, who was already burdened by other creditors' actions. Although the Sodalitas brought the matter to court and obtained a favorable judgment, they nevertheless did not take steps to collect the debt, nor did they inform Livius. With new prayers from the Sodalitas, the Rectors obtained from the Supreme Pontiff a further extension of the contract for another three years, if the causes persisted; the same was done and obtained by the Chapter. Subsequently, Livius began to delay the payment of the interest, so that the Sodalitas repeatedly summoned Livius and his guarantor to court, and after judgments were rendered, the guarantor paid the interest several times. Finally, the guarantor, having persevered, supplicated the Holy Father once more, requesting that no further extension of time be granted for the payment of the principal, as the Sodalitas's delay would be detrimental to the guarantor himself, who had only obligated himself to pay the interest; that the obligation of the fideiussio be restricted within a four-year period; that the extension already granted could not, without his knowledge, be extended to his detriment, and therefore he should be

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released from the obligation, etc., and he issued his protest. However, with a new request for an extension, and since the matter concerned a loan with interest and requirements from Castrum, after careful consideration of both prayers, and as before, a certain new extension of time was granted by the Ordinary, but in such a way that the Sodalitas would...

[*Latin ed. p. 563*]

GUARANTEE. 563 The judicial proceedings, entirely initiated with the aim of harming the debtor, were being conducted to that end. However, since the matter was still being prolonged, and the guarantor was being forced to pay interest, he finally brought the matter before the Sacred Congregation of the Council, requesting not only that he be declared free from the obligation, but also that the interest paid to the Association be returned to him, as if he had paid it improperly. Therefore, the case was presented before the Sacred Congregation of the Council under the doubts which are set forth at the end. The arguments presented in favor of the guarantor were as follows: Among other things, it was argued that a guarantee is subject to contracts of strict law, and therefore the guarantor's obligation cannot extend beyond what is expressly stated in the agreement, according to sections 99 ff. on verbal obligations, where it is written: "Whatever is necessary for establishing an obligation, if it is not expressly expressed in words, it is to be understood as omitted." It was further stated that the guarantor's obligation in the present case was expressly limited to the actual and effective restitution of the entire sum; and that the restitution of the entire sum had been promised by Livio within a period of four years; therefore, after the expiration of that four-year period, the guarantor's obligation should be considered terminated. These arguments were supported by several laws, including, but not limited to, Z. 25 ff. § idt. on Receipts, which states, "I. 27 of the Code on Guarantees, I. 7 of the Code on Leases and Contracts, in which it is written: 'If Hermes leased a property for eight years, and you guaranteed his obligation, and after the expiration of that time, when the same Hermes was still considered suitable for the lease, you did not consent, but demanded a guarantee, you should not be bound by the danger of the subsequent period. The competent judge will not be ignorant of this.'" Also, sections 47 and 38 ff. on Guardianship and Tutorship. From these laws, it is deduced that, after the expiration of the period for which the obligation of the principal debtor was agreed to continue, if the obligation is extended or renewed, the guarantor is not bound by the danger of the renewed contract. This principle applies not only if there is an extension of the obligation or a renewal of the contract, but also if there is an extension of the term of payment; for if the creditor, without the knowledge of the

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guarantor, extends the time for payment to the debtor...

[*Latin ed. p. 564*]

5 6 4 OF GUARANTEE. Some authorities teach that if the term is extended, the guarantor is released; see Speculator, book and part, title on guarantees, § 1, verse. However, this is questioned, and John Andrew, in the additions to Ferrus, in the forms of lawsuits against multiple debtors, § on solutions, discusses this. Furthermore, since the extensions in our case occurred after the established term had expired, the guarantor was in no way held liable, since he had not only never been summoned, but also, through prayers and protests, opposed the extension. It is understood that such extensions granted without the knowledge and consent of the guarantor, and especially to his detriment, are invalid. For as the contract is prolonged, new interest accrues daily, and the guarantor's obligation is increased. Generally, a guarantor is not held liable for a greater obligation arising from the extension of the payment, unless he has expressly agreed to it, as stated by Paulus Voet in *Annotationes ad Pandectas*, book 3, Institute, number 8; Sand. decisions, book 8, title 10, on final matters, 5; Berli, chapter on conclusions, practical part, 2, conclusion 2, 5; Mascard, disapproving opinions, part 2, conclusion 1113, number 9. Especially in this case, since Livius's estate was not being seized by the Rectors of the Sodalitas, but was instead being consumed daily by foreign funds and the expenses of lawsuits, and Livius's condition was being altered and worsened due to the negligence of the creditor; in such a case, as Cardinal De Luca states in *De Credit*, discussion 94, number 6, and discussion 96, number 7, there is no action against the guarantor who is not in default, after the principal debtor's condition has been altered due to the creditor's negligence. This seems particularly applicable in the present case, since the Sodalitas was obligated to seize the debtor, even according to the Apostolic Rescripts. If the guarantor were not considered released from his obligation in this case, it would seem just that he should now be excused from his office; for it is known that a guarantor who has stood by for a long time may rightfully request his release; and a guarantor is considered to have stood by for a long time if he has remained in the guarantee for ten years; but in the present case, the guarantor has remained in the guarantee for more than twenty years; and it seems just to conclude, with Voet, in *Annotationes ad Pandectas*, book 1, title 46, number 39: "Assuming that the guarantor has stood by for a long time..."

[*Latin ed. p. 565*]

FIDEIUSSIONIS. 565. It is understood that in a guarantee, the creditor, receiving annual interest from the debtor, does not repeat the principal sum; therefore, trusting in the guarantee, and resting securely in its efficacy, it seems permissible to allow the guarantor the opportunity to demand

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payment from the creditor, to free the debtor, or to seize collateral, and to ensure that, with a written protest, he is not bound to wait for damages that might arise from further delay, and that he may expect a resolution, as justice dictates, even if perhaps we are deficient in the law in this matter.

But, apart from being released from the obligation he undertook, it seemed that the guarantor could seek compensation for damages, both because of the negligence in placing the collateral in a secure location for the first creditor who was dismissed, and also because of the negligence in pursuing Livius, with an urgent decree being issued, in which the association was ordered to bring the case against the debtor Livius to a conclusion.

THOSE ARGUMENTS WHICH WERE PRESENTED IN FAVOR OF THE PIOUS ASSOCIATION. – Along with certain opinions of Doctors, which are somewhat varied in such matters, the doctrine of Vinnius was presented, who in his treatise *Quaestiones de Jure Selectis*, Book 1, Chapter 42, discusses a question that has some affinity with our own: whether, if the creditor extends the term of payment to the debtor, without the knowledge of the guarantor, the guarantor is released; and he resolves this question negatively, adding the following reasoning: "No legal principle can be produced in our law to prove the contrary, whether the guarantee is for a definite or indefinite time. However, interpreters abuse certain passages, such as the law 'Si cum Hermes,' in the Code of Local Laws, and the question 13 §. ult. ff. in the same; for in these passages, it is not about the extension of the term of payment, but about the renewal of the obligation for which the guarantor intervened; and it is not said that the guarantor is released by the renewed obligation; but rather, that the risk of the renewed obligation does not pertain to him. Moreover, he does not cease to be bound by the previous contract..." Therefore, if the creditor extended the time for payment to the debtor, who had promised to pay on a certain day, and for that reason had provided a guarantor, we do not see why the guarantor should be considered released, since the principal obligation remains in force. For the time stipulated in the guarantor's obligation is not intended to terminate or limit the obligation.

[*Latin ed. p. 566*]

566. Regarding a guarantee, it must be noted that in certain circumstances, something else must be said with respect to the dangers that follow in time, namely, *d. I.* If this is the case with *Hermes C. de locat.*, but in order to effect a settlement and execution... Therefore, it is understood that the extension of the term for settlement does not postpone the execution, and that the principal obligation remains, only removing the debtor's delay, which otherwise would harm even the guarantor, especially in every case. If someone, *24 §. 1 ff. de Usur. I. Morae 88 ff. de Verb. oblig. I. Quaero 54 ff. loeat.*, it necessarily follows that the extension

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does not release the guarantor, but he remains obligated, either simply, or having bound himself with the addition of time: the extension takes place with all its accessories and qualities – nor does any repetition of a finite obligation occur here, so that it can be said that he is freed in the future, as in the case of *Hermes C. de locat.*, or by a novation, by which the prior obligation is extinguished, and a new one is substituted in its place by the words of the stipulation, so that it can be said most piously and even in the past that he who has been affected by the novation is freed, *I. Novatione 18 ff. de Novat. I. Ubicumque 60 ff. de Fideiuss. I. 4 Cod.*.

But, more pertinent to the present case, it was observed that a period of four years had been established and limited for the restitution of the entire estate, especially for the benefit of the debtor Livius, so that he could not restore the estate unless he had notified that he would make such a restitution three months prior through a public official. And the penalty was only in title, to the extent that if Livius were in default in the settlement of the fruits, the Society would have the power to reclaim the estate even before the four years had elapsed. Therefore, since the limitation of time was assigned for the benefit of Livius, the guarantor who had guaranteed in solidum, and in that manner and form in which Livius had obligated himself, cannot be said to be released from the obligation after the four years have elapsed. Hence, it was said that the creditor's negligence does not help to extinguish the guarantee, to the extent that, by granting indulgences, he allowed Livius's estate to diminish to the detriment of the guarantor. By the distinction indicated between a subsidiary guarantor, whom they also call a guarantor of indemnity, and a simple guarantor, it was noted that the guarantor of indemnity can indeed repel the creditor's action, if the creditor, having been duly warned to pursue the debtor, has long abstained from doing so and has allowed his fortune to be squandered, *Z. 41 ff. de*.

[*Latin ed. p. 567*]

GUARANTEE. 567 guarantee; for in this case, the guarantor is not bound by the same obligation as the debtor, but only to the extent that the creditor cannot obtain from the debtor, according to L 166 ff. concerning the verb "obligate." But this cannot be said of a simple guarantor, who is bound by the same obligation as the debtor, according to Z. 62 ff. concerning guarantees, in which it is written: "If the guarantor notifies the creditor that he will compel the debtor to pay the money, or seize a pledge, and he fails to do so, can the guarantor bring a suit against him based on bad faith?" The answer is: he cannot. See also the Doctors there. In fact, it was observed that the present guarantee was not merely subsidiary, but was constituted in solidum, and that the guarantor had obligated himself to pay the fruits in the same manner and form as Livius. Moreover, since the pious Sodalitas had acted with great prudence, it could not be accused of negligence or carelessness, if at times it postponed the seizure of Livius's

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property, as was shown by the documents presented in the case. Regarding the release that the guarantor requested from the Sodalitas, after having remained in the guarantee for a long time, it was observed that such a remedy does not belong to the guarantor against the creditor, but against the principal debtor or against another guarantor whom the debtor may have given as security for indemnity. For this purpose, the guarantor is granted the actions of mandate or of administration of affairs, which is confirmed by many laws and authorities. By virtue of these actions, the guarantor can demand that suitable pledges be delivered to him, or that he be admitted to take possession of the debtor's property, or finally that the same property be sold to satisfy the debt, as can be gathered from Z. 10 of the Code of Mandates and the Glossary, on law 38 ff. of Mandates. Cardinal De Luca, on Credits, book 103, paragraph 3. The Holy Roman Rota, in the Benevento seizure case, April 24, 1818, § 3, before Isoardo; in the Rome guarantee case, June 15, 1857, § 4, before Sbarretti. These and other extensive observations have been made in order to resolve the doubts. I. "From what time and under what circumstances does the right to release from the guarantee belong to the guarantor in this case?"

[*Latin ed. p. 568*]

568 OF GUARANTEE. II. "Whether the indemnity to be provided to the guarantor is due in every case." RESOLUTION. — The Holy Congregation, after discussing the matter, decided on January 27, 1866, to respond as follows: To I. Negatively. To II. As provided in the first [question]. FROM THESE, THE FOLLOWING ARE DEDUCED: I. In judging questions concerning contractual obligations, it is most fitting to consult the wisdom of the ancient jurists, whose responses, having been handed down according to the norm of justice, never lose their force (1). II. He who has guaranteed in solidum the payment of fruits arising from a legitimate productive credit, is not released from the obligation to pay the fruits if the principal debtor, failing to pay the fruits, is also in default regarding the return of the principal sum. III. Nor is the creditor strictly bound by law to seize the assets of the principal debtor for the return of the principal sum, so that the guarantor, who has purely guaranteed the payment of the fruits, may be released from the obligation to pay. IV. For the solidary guarantor is bound by the same obligation as the principal debtor to whom, by contract, the obligation to pay the fruits was present in this case, until the principal sum is returned. V. Therefore, if the guarantor is not easily able to avail himself of any legal remedy against the principal debtor, so that the latter either pays the fruits or returns the principal sum, the guarantor is perpetually bound to pay the fruits (2). VI. Nor is the creditor obligated to transfer to such a guarantor any pledges or mortgages for the principal sum, since (I) Questions concerning contracts are often difficult. To understand and accurately define their obligations, it is most fitting to study that ancient law

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which, coalescing from the wisdom of many responses and confirmed over many centuries, trains the mind to judge according to the norm of justice. (2) "If a guarantor is accepted by a creditor, it is one stipulation for many pensions, and therefore the guarantor is bound in all the pensions. When the principal is in default with his payment, the guarantor's obligation also continues, just as if he were in default in paying the stipulated sum, and he died." 1. 8 *de fideiuss.*

[*Latin ed. p. 569*]

FIDEIUSSIONIS. 560 He who has obligated himself for the principal sum, but only for the fruits (1). VII. You will finally gather the Apostolic Benevolence, or the Apostolic Rescript requested and obtained from the pious place, for the confirmation and extension of contracts, so that the conditions of the contracts are not altered. THEOLOGICAL. On December 1, 1866. Session 5, chapter t, concerning Reforms. Concerning the establishment of a college. Through the munificence of a certain Swedish family, several minor ecclesiastical benefices were established in the city of N. There were also parochial benefices under the patronage of that same family; specifically, in the parochial church under the title of St. John the Baptist, among the several beneficiaries, two were numbered, one of whom had the office of assisting the Parish Priest, and the other, in the manner of a theologian, had the office of expounding the Holy Scripture to the people on feast days. But since it was the desire of the clergy and the people that all these disparate and disconnected benefices might be gathered together as if into one body, so that the church of St. John might be made most convenient for the people, Gregory XVI, by Apostolic Letters in the year 184?, yielded to these wishes. Concerning the provision of a theologian, the Apostolic Letters contained the following: "Of those (Canonicates being established), one shall expound the Holy Scripture, as previously was done by the theological beneficiary." (1) "To the creditor who has accepted both collateral and a guarantor for the same debt, it is permitted (if he prefers) to sue the guarantor for that sum for which he obligated himself. But when he does so, he must transfer the right of the collateral to him. But if he also has the same collateral or mortgages obligated for another cause, he is not to be compelled to transfer the collateral until all the debt is paid." 1.12, Code of Fideiuss.

[*Latin ed. p. 570*]

570 THEOLOGICAL. The obligation of explaining to the people rests upon [the institution]. "And again: 'The obligation of establishing a Collegiate Church from among the Canons rests upon the sacred Scriptures being explained to the people, as previously done by the Beneficiary theologian.' Furthermore, in those same documents, it is commanded to the Bishop that 'the right of patronage and of presentation... for establishing...

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Canons and Beneficiaries in any of their vacancies, to a noble and illustrious family (Dynasty), in exactly the same manner in which he previously enjoyed this right for establishing parishes and benefices... should be perpetually reserved.'" After the first Canon theologian died, who had previously been the Beneficiary before the establishment of the Collegiate Church, two individuals, one a Canon and the other a Beneficiary, petitioned the patron family to nominate them to provide the theological instruction. However, when the Dynasty nominated the Beneficiary, the Canon protested, and, after an impediment was raised in the episcopal court, he requested that the Holy See declare the nomination invalid, both on the basis of the law derived from the Apostolic Letters and also on the basis of the endowments which the sacred canons require, by which he affirmed that the Beneficiary was not qualified. After hearing the information and the vote of the Ordinary, and after hearing the Patron and others who were concerned, the question was proposed under the doubt which is stated at the end.

Skeptical Summary. Since certain ambiguities arose in the aforementioned accounts concerning the right of choosing, and also concerning the designation of a particular stipend for the Theologian, which did not seem to have been carried out, although the office was prescribed; the following points were first recalled: The Council of Trent, Session 5, chapter 1, on Reform, decreed: "So that that heavenly treasure of sacred books, which the Holy Spirit has generously given to men, may not be neglected, the sacred Synodus decreed and established that in those churches in which a stipend, or a reward, or some other designation is found assigned for readers of sacred theology, the Bishops... shall compel and oblige those who obtain such a stipend to explain and interpret the sacred Scriptures themselves, if they are suitable, or otherwise, to be chosen by the Bishops themselves, through a suitable substitute. Furthermore, the stipend, the reward, or the designation..."

[*Latin ed. p. 571*]

THEOLOGICAL. 571 Such a benefice or stipend should be conferred only upon suitable persons, and those who are capable of fulfilling this office by themselves; otherwise, the provision made is null and void. However, in metropolitan churches, or in populous churches, and even in collegiate churches existing in some notable town, if there is a numerous clergy, and no such benefice or endowment is found to be established, then, except in the case of resignation, the first person called is one to whom no other incompatible duty has been assigned, and this person is to be understood as being permanently appointed and designated for that office.

Furthermore, it is added that if a benefice with the office of explaining the Holy Scriptures already exists in a church, and if it has been united with other endowments by Apostolic letters, then the canonical benefice is to be considered established, so that the canonical office of explaining the

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Holy Scriptures is incumbent upon the person who subsequently obtains that particular benefice. The union of a benefice with the office of Theology is not accidental and personal, but real and perpetual, as is deduced from the decree of Trent, which is explained by Cardinal Petrucci in Constitution 2 of Innocent VI, number 26. This was also sufficiently considered in the Apostolic Letters concerning the erection of a collegiate church, in the case of a vacancy, through the words expressed therein: "The Canon, the Theologian not excepted, enjoys the benefice of his predecessor."

Regarding the right of option for vacant benefices, which prevails in some Chapters, it was observed that the right of option could also exist together with the right of patronage: for when a Canon ascends to a vacant benefice after relinquishing his own, the last benefice that remains vacant will be subject to the nomination of the Patron. But if we are speaking of a theological benefice, since this is to be understood as being permanently united with the theological office, it cannot be subject to option; and this has been confirmed by several authorities, and specifically declared by the Sacred Congregation of Councils in Bellunen, December 14, 1647, Decree Book 18, page 432, where it is written: "Option has no place in a theological benefice." Also, in Massen, September 16, 1656, Decree Book 20, page 163. However, the right to option for a richer benefice has sometimes been permitted to a Canon theologian in Chapters where the right of option prevails, but in such a case, if the theologian ascends to one of the richer benefices, this is to be understood as being permanently attached to the theological office, as was stated in a rescript of May 8, 1688, in these words: "But, as is necessary..."

[*Latin ed. p. 572*]

572 THEOLOGICAL. Concerning the provision of a penitential and theological office, and in order to provide suitable counsel, the Holy Congregation, with the authority specially granted to it, has benignly decreed that a Penitentiary and a Theologian may aspire to such offices, just as other Canons, until they are assigned to one of the more lucrative benefices, which shall perpetually belong to the Penitentiary and Theologian for the time being. WHAT THE CANON PRESENTED IN HIS FAVOR. — The Canon raised objections against the presentation of a certain Beneficiated individual for the office, especially on two grounds: first, because the named Beneficiated individual renounced the theological office; and second, because the necessary suitability for the theological office was not present. For this suitability, which is acquired through study, is required in a Theologian, although in the present case, the theological office was not to be conferred through a specific course of study. The Council of Trent decreed that such offices should only be conferred upon suitable individuals who are capable of fulfilling this duty on their own. And Benedict XII, in his Constitution for Italy, issued in the year 1725,

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which begins with the words "Pastoralis officii," not only urged Bishops to establish theological offices in their churches, but also ordered that they be conferred upon the most worthy, namely, those who had already obtained a doctorate or license in sacred theology, or who could obtain them within a year. A certain response was recalled, given in Amerina on June 2, 1860, through a summary of prayers; it concerned the erection of a theological office. When the Bishop of Amerina proposed establishing a theological office from the Canonry of Aloisi, which was under the patronage of laymen, and the Patrons objected, the Holy Congregation responded: that a theological office should be erected from the Canonry of Aloisi, but that the Patrons must nominate someone actually suitable for the office. Furthermore, the individual named as Beneficiated was said not to possess either a doctoral degree or a license from San Donato di Ninea; whereas, on the contrary, the Canon had obtained a doctoral degree in both Canon and Civil Law. Secondly, the Canon argued that the named Beneficiated individual lacked the quality required in the Apostolic Erection Letters. He affirmed that, according to those same Letters, a Theologian must be chosen from among the Canons, and that he must actually be a Canon in order to be nominated.

[*Latin ed. p. 573*]

THEOLOGICAL. 573 CONCERNING THOSE THINGS WHICH WERE DERIVED FROM THE BENEFICE. — Here, however, he maintained that a nomination made through the favor of the benefice was valid, both from his own perspective and from that of the patron. The nomination was upheld from the perspective of the patron, because a lay patron is not prohibited by law from making a nomination. The benefits of a lay patronage are not subject to the law of concursus; especially in the present case, in which the right of nomination, even for theological chairs, has been expressly reserved to the patron in the Apostolic Letters. It was upheld from the perspective of the nominee, because it is sufficient that the suitability of the nominee be demonstrated, and that nothing else be required. It was not stipulated in the letters of erection that beneficiaries were excluded from immediately receiving a theological chair, but rather that the theologian should hold the office that the beneficiary previously held, provided that it was one of the canonical offices, so that the theologian presented should, by virtue of his presentation, necessarily obtain the theological chair that is a canonry. With these and other considerations, the proposed questions are to be resolved. I. "Whether the election of (N. N., Beneficiary) to a theological canonry is valid in this case." And, to the extent that it is negative, "How and to what extent should the opposition made by (N. N., Canon) in this case be considered?" RESOLUTION. — The Sacred Congregation of the Council decided on December 1, 1862, to respond as follows: To I. The presentation and the granting of the office to (N. N., Beneficiary) are

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to be upheld, provided that his suitability has been demonstrated. To II. Provision is made in the first response. FROM THIS, IT MAY BE GATHERED: I. The theological chair, which must be determined according to the Tridentine law, must be so closely joined to the office of the theologian that it cannot be held by anyone other than a theologian (1). (1) Concerning this very close union of office with the chair, see another question which we have presented in Volume I, page 610, which is entitled "Essential." The chair...

[*Latin ed. p. 574*]

574. THEOLOGICAL BENEFICES. II. Therefore, it should not be subjected to the right of option: for the person must be preferred who, by law, is suitable to perform the assigned office. III. Although, according to the Constitution of Benedict XIII, theological benefices are to be conferred in Italy and the adjacent islands through presentation, in the manner of parochial churches; nevertheless, this law does not require that the patronage be subject to lay patronage. IV. For in this case, it is sufficient that the Ordinary, who is to institute the presentation, be satisfied with the simple suitability of the presentation itself.

REGARDING DISTRIBUTIONS. [Brie, July 28, 1866, Session 24, chapter 12, concerning the Reform of Compendiations.] The canons of the collegiate church of N. stated: in their church, according to a very ancient custom, all revenues derived from funerals, anniversaries, Masses with singing, and similar functions, whether fixed or occasional, are to be paid only to those who are present, and nothing is to be paid to those who are absent, even if they are detained by a very serious infirmity. Now, since two canons were present who enjoyed the Indult of Jubilation, and they considered that, even in their absence, they had the right to receive revenues from fixed Masses with singing and anniversaries, they requested that it be declared whether these two canons could receive those same revenues. According to the custom, the Ordinary, for information and a vote, and as both the Chapter and the canons granted the Indult of Jubilation were reminded, each was required to provide evidence, especially concerning the existence of the custom; certain testimonies were presented by the Chapter, which confirmed the ancient custom, but nothing was presented by the two canons. Therefore, the question was proposed under doubt, and the matter remains unresolved.

[*Latin ed. p. 575*]

REGARDING DISTRIBUTIONS: Synopsis of Discussion 575. Several resolutions were indicated which had been given concerning such matters. It was noted that those who have been granted the Indult of Jubilation are, by that very fact, exempt from the law of residence in the benefice, and are to be considered, by legal fiction, as residents, and indeed, as ac-

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tually present for the performance of divine offices, as stated by Benedict XIV in *De Syn. dioec.*, L. 13, c. 9, n. 15. From this, it is to be understood that the Indult of Jubilation canonically suffices to receive all the fruits and emoluments of one's benefice, as has been declared many times by the Sacred Congregation, and therefore, such Canonicals are to receive all distributions which arise from service and labor to the Canons, according to what is taught by Moneta in *De Distrib.*, p. 2, q. 3, n. 13, and by the Sacred Congregation in *Patavina*, July 9, 1714; and furthermore, also the compensations or substitutes for the absences of other Canons, as in *Aquipendien*, April 1, 1719, in response to a question, and in *Spoletana* and *Reatina*, April 3, 1841. Indeed, even extraordinary distributions are to be received, as in *Burgi S. Donnini*, April 19, 1704; and also emoluments which arise from Anniversaries, as in *Novarien*, Jubilation, October 2, 1677. However, with regard to emoluments which derive from external or extraordinary functions, after making the customary distinction between uncertain revenues, as it is commonly said, and fixed revenues, it was noted that such Canonicals with the Indult are not to receive emoluments of the former kind; but they may receive those of the latter kind, provided that the will of the testators or donors does not object, as is shown by Pignatell, vol. 9, *Consult.*, 134, Fagnanus in *Cap. Licet de praeb.*, Cardinal Petra, to the Apostolic Constitution, vol. 2, Constitution 12, Innocent III, sect. 2, no. 27, and by the Sacred Congregation in various documents. Although this is a general rule, it was added that particular constitutions or customs in individual Chapters may establish a different right, and the case of *Tudertina* of the year 1573, *Lib.* 1, *Decret.*, p. 86, was cited, in which it had been stated: "It is an ancient constitution in that church that the Canons who are infirm should, during their infirmity, receive the fruits of both the prebend and the daily distributions; but a custom has been introduced, so that only the infirm receive the fruits of the prebend, and not the daily distributions."

[*Latin ed. p. 576*]

376 CONCERNING REJOICING AND DISTRIBUTIONS. Q. The question arises in this case whether a constitution, or rather, a custom, ought to be observed. To this, the Holy Congregation responded: that a custom, if legitimately prescribed, can set aside a constitution. Also, in Catanzaro, concerning distributions on January 27, 1866, which were being carried out according to established practices, it was mentioned that the Canons, even though they were infirm, did not receive distributions derived from fixed anniversaries; however, when a sick Canon inquired about this custom, the Sacred Congregation responded: "The custom must be observed." Furthermore, the great force of custom in matters concerning Canons granted the indulgence of rejoicing was demonstrated by similar resolutions; often, the question is raised whether distributions and other benefits are due to a Canon granted the indulgence of rejoicing, even if he is not present in the

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choir; and the answer is: "Yes, provided that it does not contradict constitutions and the custom of the Church, as is noted in Rieti, concerning the rejoicing of April 28, 1770, §." Moreover, in L'Aquila, on June 26, 1745, an indulgence was granted to the Archdeacon due to his illness; and the question was raised: "Whether, and with what benefits, he ought to enjoy [his position] in this case." The Sacred Congregation responded: "He ought to enjoy all benefits, except those which, either by the dispositions of testators, or by statute, and by the custom of the Church, are due only to those who actively serve." With these considerations, the doubt is resolved: "Whether and with what benefits Canons granted the indulgence of rejoicing ought to be considered in this case."

RESPONSE. — The Sacred Congregation, having knowledge of the matter on July 28, 1866, responded: "The custom must be observed."

FROM THE LAW:

I. Those who are granted the indulgence of rejoicing (which is granted as a reward for labor and diligence, according to the dictates of equity) are to be considered, by virtue of this indulgence, as present in the choir and serving in divine offices, even if they are absent.

II. From this consideration, or legal fiction, they have the right to receive all those benefits which diligent Canons receive by serving in divine offices.

[*Latin ed. p. 577*]

REJOICING REGARDING DISTRIBUTIONS. 577. However, such a faculty, derived from an indulgence, may be subject to some limitation by legitimate canonical constitutions, by the dispositions of testators or donors, and by legitimately established custom. IV. Furthermore, it does not seem that those same beneficiaries should receive any emoluments derived from external functions; for, considering the nature of these, the will of the donors appears to oppose such a thing. H.S. CONGREGATION FOR INDULGENCES. CENOMANENSIS. CONCERNING THE SEPARATION OF THE MOST HOLY RELICS. February 22, 1847. In order to promote the veneration of sacred relics, the Bishop of Cenomanensis presented to the Sacred Congregation for Indulgences and Sacred Relics, that he had established in his diocese that particles of the Most Holy Cross of Our Lord Jesus Christ should not be placed in the same containers as the relics of the Saints, because the veneration of the relics of the Saints is not the same as the veneration of the Most Holy Cross and other instruments of the Passion of Our Lord Jesus Christ. Furthermore, he was guided by the decree of the Holy Congregation of Sacred Rites of May 5, 1826, and by the explicit testimony of the Cardinal in Index 7°, which states: "Relics of the Saints, the Cross..." Moreover, the aforementioned Prelate observed that in several places in his diocese, small cases were being carried about,

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containing in them, in Rome, Acts, vol. II, p. 3B.

[*Latin ed. p. 578*]

578. CENOMANEN. Since the Relics of the Holy Cross are included with the Relics of the Saints, it did not seem fitting that such Relics should be exposed for the veneration of the faithful, unless a separation of the Relics of the Holy Cross from the Relics of the Saints had first been made; therefore, he proposed the following: "Whether the practice of separating the Relics of the Holy Cross of Our Lord Jesus Christ from the Relics of the Saints should be carefully observed and maintained."

RESPONSE. – The Holy Congregation, having learned of this on February 22, 1841, responded affirmatively, and in accordance with the opinions of the Consultors.

The Consultor observed that the entire solution of the matter depended on the difference in the worship given to Christ Our Lord and to the Saints. For, as many theologians teach, the Holy Cross is to be venerated with a relative latriaic worship; the Saints, with a relative duliaic worship; and the Most Blessed Virgin Mary has her own special hyperduliaic worship, which is also relative. He stated that this difference in worship also leads to a difference in the ceremonies in the veneration of the holy Relics. Thus, for example, the Liturgy requires that when a particle of the Holy Cross is exposed for the public veneration of the faithful, it be placed under a canopy, and that the incense offered be different from that offered to the other Relics of the Saints, and that those passing by should kneel. Indeed, if a Relic of the Holy Cross is found in a reliquary together with the Relics of other Saints, such acts of reverence, which seem to indicate the special worship due to the Holy Cross in view of the Lamb Immaculate who hung upon it, might appear to be offered to the other Saints, who are not to be venerated with such worship. Or, conversely, if the Relic of some Saint, say, Saint Peter, is exposed, and it happens to be placed in the same reliquary with the Holy Cross, while we only perform the act of veneration according to the duliaic worship, we would seem to be showing irreverence to the Holy Cross, and neglecting it, which deserves a more excellent worship.

(1) The Holy Congregation, of course, considered the observance of the Decrees, which might be neglected in Rome concerning the presentation of sacred Relics with regard to the separation thereof.

[*Latin ed. p. 579*]

CENOMANENSIS. 579. The Consultor added nothing further, noting that several boxes were being carried about, in which the relics of the Saints and the Holy Cross were found. Such boxes, it was said, were traditionally reserved for the private piety of individuals. To this, we add the decree of the Holy Congregation of Rites, which the Archbishop of Cenomanensis had cited, concerning the matter.

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DECREE GENERAL. — "Several Most Reverend Fathers, Prefects of the Sacred Congregation of Rites, having been presented with the question of whether it is permissible, in public and solemn supplications, which are held on the occasion of the celebration of the principal Patron Saints throughout the cities and places, to carry the relics of these Saints, or the thorn of the Most Holy Crown of Our Lord Jesus Christ, or the wood of the life-giving Cross, under a baldachin; they responded that the use of the baldachin pertains only to the Most Holy Eucharist, as is stated in the Ceremonial of Bishops, the Roman Ritual, and other ritual books; therefore, taking into account the difference in rites and worship, neither the instruments of the Lord's Passion, nor the relics of the Saints, should be carried under a pall or a baldachin, declaring such a practice an abuse, and disapproving of it, and urging its elimination. However, since the wood of the Most Holy Cross, and the Most Holy thorn of the Crown of the Lord, having been sanctified by immediate contact with the Most Holy Body of Our Lord Jesus Christ, and sprinkled with His most precious Blood, and therefore deserving of special reverence; and since, moreover, it has been the custom everywhere, in all places and nations, to carry them under a baldachin; they considered that the carrying of these objects under a baldachin should be tolerated, since it seemed fitting and in accordance with reason to exhibit these objects as signs of reverence to the Lord, which should in no way be given to the Saints."

But since, despite these sanctions, the abuse has gradually begun to spread in some places, and some are found who, with a certain pious deceit, have intended to circumvent the law, placing the relics of the life-giving Cross with the relics of the Saints, so that they may carry them under the baldachin under this pretext, as has been repeatedly reported to His Holiness and to the Sacred Congregation, concerning these abuses.

[*Latin ed. p. 580*]

580. CENOMANEN. (Concerning Food: Hence, let the proper order not be disturbed, and let due regard be maintained for external, even honorific, matters, although not essential ones, so that abuses still prevalent may be opportunely pruned away and eliminated, and that what has been prescribed may be carried out with due diligence and mature consideration, in the Ordinary Congregation held on May 6th of the current year, 1826. The Fathers resolved: That a general decree should be issued, in accordance with other resolutions, to be established as a rule to be observed everywhere, so that, in the future, under no circumstances, by anyone, under any pretext of solemnity, devotion, piety, privilege, indulgence, concession, tolerance, or custom, however ancient, may the relics of the Saints ever be carried processionally under a baldachin; however, it may be tolerated and permitted that the Wood of the Most Holy Cross and other instruments of the Lord's Passion, with particular attention to the veneration given to

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them and considering the almost universal custom, may be carried under a baldachin, provided that this is done separately and distinctly from the relics of the Saints, to which this particular honor is entirely inappropriate; and this was reported to the Most Holy Father, our Lord Leo XII, Pope, by me, the undersigned Secretary of the same Congregation. His Holiness approved the opinion of the Sacred Congregation, confirmed it, and ordered it to be promulgated and recorded in the Acts of the Congregation of Sacred Rites, strictly instructing the Local Ordinaries to take steps to eliminate the abuses that have occurred, and to diligently enforce the observance of this decree. May 27, 1826. JULIUS M. Cardinal, Bishop of Ostia and Veliterna, Delegate of the Holy See, and Prefect of the Sacred Rites, etc. In place of the Seal. I. G. FATATIS. R. C. SECRETARY COADJUTOR. (1) It had already been decided in the Sacred Congregation, convened on March 23, 1686, in Calagurite, and most recently, on September 25, 1820, that the relics of the Saints should not be carried in processions under a baldachin. However, in order to eliminate the abuse that has been reported to have arisen in several dioceses, the same Sacred Congregation considered it not only appropriate, but also necessary...

[*Latin ed. p. 581*]

CENOMANEN. From these things, one gathers: I. That among the sacred relics, the wood of the Most Holy Cross, upon which the Immaculate Lamb was affixed, holds the foremost place in dignity. II. That, in view of so great a Victim, the faithful, by universal custom, have always shown and continue to show it the most special veneration among all the relics of the Saints. III. That, for the promotion of this veneration, rites proper and particular to it have been approved by the authority of the Church. IV. Therefore, it is entirely fitting that the sacred wood be exposed to public veneration, mingled with the relics of the Saints in the same place, and conversely.

CONCERNING THE PRIVILEGE OF THE MODERATORS OF THE SODALITIES OF THE DAUGHTERS OF MARY IN BLESSING MEDALS. On March 26, 1867. The parish priest of the Basilica of Saint Agnes outside the city walls requested that the Most Holy Father declare whether the Moderators of the Pious Unions of this name, which are affiliated with the newly established Primary Sodality in the same Basilica, under the patronage of the Blessed Virgin Mary Immaculate, and the renowned Saints, V. and M. Agnes, may bless any medals of the Blessed Virgin Mary, or only those of which mention is made in the aforementioned Apostolic Letters (1), with a Plenary Indulgence (according to the terms contained in the letters of January 16 and February 16, 1866), as long as they are members of the Primary Sodality. The Most Holy Lord Our Pope has approved and confirmed a general law, and furthermore, He has strictly enjoined the local Ordinaries to diligently observe it. This note, added to the decree, is found

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in the Gardelliniana collection, from which we have transcribed the decree itself. (L) The Apostolic Letters mentioned here are presented on page 358 and following.

[*Latin ed. p. 582*]

582 CONCERNING PRIVILEGES. Such petitions presented to the Most Holy [See] were referred to the following Decree. DECREE. "The Most Holy Lord Pope Pius IX, during an audience granted to the Most Eminent Cardinal Prefect on March 26, 1867, ordered that a response be written concerning the doubt raised, namely, that only those coins may be blessed which bear the image of the Blessed Virgin Mary and of Saint Agnes, as is the case with the medal of the Primary Union, of which mention is made. Notwithstanding any contrary [provisions]." Given in Rome, from the Secretariat of the Holy Congregation for Indulgences, on March 26, 1867. A. Card. BIZZARRI, Prefect. In place of the signature: A. COLOMBO, Secretary. HOLY ECclesiASTICAL CONGREGATION OF IMMUNITY. May 29, 1838. Summary of the case. In the city of N., belonging to the Pontifical States, two homicides had occurred during a quarrel. In the regular process initiated in the criminal court of the same city, among the other presumed guilty parties, there were two who had a brother who was a priest. It happened that the written records of the initiated process could no longer be found, for they had been secretly taken away. An investigation was instituted to discover the person responsible for this theft, and it was determined that a certain Official of the same court had transmitted those records to the aforementioned priest. This, however, was established from the judicial confession of the same Official, who confessed that he had given the records of the process to the priest, because he had been asked by the priest to write supplications, based on those records, to obtain the favor of the Supreme Pontiff for his brothers, in the process.

[*Latin ed. p. 583*]

5. 83. It is reported that the Presbyter had promised the authorities that he would immediately return the documents; however, he did not return them any sooner. After such a judicial confession, the Tribunal did not neglect this incidental matter, but continued the investigation and heard witnesses who testified against the Presbyter. After these testimonies were heard, and when a judgment was to be rendered regarding the fraudulent removal of the documents, the Defender of the Official who had taken the documents opposed a declinatory exception of jurisdiction, arguing that the Tribunal was not competent to judge such a case, since it involved a Presbyter. However, since the opinions of the Judges did not agree on how to proceed in this matter, they referred the case to the Supreme Moderator of the Tribunals, who, as was proper, entrusted this incidental matter to the Holy Congregation of the Immunitas. In order that the matter could

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be accurately defined, it was necessary to examine the completed process, from which it clearly appeared that several witnesses had been questioned regarding the Presbyter, and that some of them had testified that they had received from the same Presbyter a document stating that he had obtained the documents in question from the Official.

WHAT WAS NOTED BY THE OFFICE. — After a brief exposition of the facts, it was noted that it is the practice of the Holy Congregation that, in criminal proceedings in which a cleric is involved, a lay Tribunal cannot intervene unless it has obtained the authority to do so from the Holy Congregation of the Immunitas; and that, if it has not obtained such authority, the case must be referred to the ecclesiastical court, as in the cases of *Bottonieri*, November 23, 1833, and *Faventina*, June 17, 1834, in which the Governor, after having received a certain complaint in which a Presbyter was involved, proceeded to investigate, and asserted that he had the right to do so because he had issued a protest; however, the Holy Congregation judged that this action was contrary to the sacred canons and the existing discipline, and that censures had been imposed.

REGARDING THE IMMUNITAS. With these observations, the following questions were raised:

I. "Has the ecclesiastical immunity been violated by the secular Tribunal (N. N.) in the preparation of the process in this case?"

[*Latin ed. p. 584*]

584. CONCERNING IMMUNITY. I. And this is affirmed. II. Whether acts which follow a violation are null in this case. And this is affirmed. III. Whether and how provision should be made in this case.

RESOLUTION. – The Congregation responsible for Ecclesiastical Immunity, having examined the proceedings, and after discussion on May 29, 183[?], decided as follows: Regarding I and II, it affirmed. Regarding III, it was determined to consult with the Most Holy Father concerning the issuance of a decree to effect the sentence against only those guilty of homicide, and to remit the decision regarding the proceedings to the aforementioned ecclesiastical court.

THEREFORE, THE FOLLOWING ARE DEDUCED: I. A lay tribunal is entirely devoid of jurisdiction to institute an inquiry concerning an ecclesiastical person. II. According to the sacred canons, if a lay tribunal institutes such an inquiry, the proceedings, insofar as they infringe upon ecclesiastical immunity, are null, and any other matters that may have followed in the same proceeding are tainted with the censure of nullity. III. Therefore, a criminal case in which an ecclesiastical person is implicated in a crime must be heard in the ecclesiastical court.

[*Latin ed. p. 585*]

585 = IX. PRACTICE OF THE SECRETARY OF THE VICARIATE OF

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ROME. CONCERNING CLERICS FROM OTHER DIOCESES RESIDING IN THE CITY AND SEEKING ADVANCEMENT IN THE ORDERS. A certain special practice exists within the Vicariate Secretariat of Rome, originating from Pontifical Decrees, whereby Clerics who take up residence in Rome (which, for this purpose, is understood to mean a stay of at least four months), although they may possess the most ample dismissal letters from their respective Ordinaries for the reception of the Orders; nevertheless, they cannot be promoted by other Bishops unless they have undergone a prior examination in the city and have obtained permission in writing from the Most Reverend Vicar of Rome. They cannot, indeed, neglect or refuse the examination in Rome, nor can they receive the Orders which they desire to receive while residing there; if they act otherwise, they incur, by that very act, a suspension of the Order received, from which they cannot be released except by the Roman Pontiff. Therefore, we have considered it fitting to explain this practice, which is not entirely well-known here, so that it may be pleasing to those Clerics, who are numerous, and who come to Rome with eager hearts from distant regions. And we do so, using the very words with which Romualdus Ilonorante explains the Practices of the Secretariat of the Tribunal of the Vicar of Rome in his work, with some additions. Thus, in chapter 16, the Author speaks as follows: "Clerics residing in the City for more than four months, cannot, outside of the same City, be promoted to the Orders, even by virtue of their Ordinaries' dismissal letters, or by any other authorization, unless they have been approved by the Examiners of the City, and have obtained written permission from the Most Reverend Vicar; otherwise, they are, by that very fact, subject to the suspension reserved to the Pope."

[*Latin ed. p. 586*]

586 CONCERNING CLERICS. Twelve edicts from the Supreme Pontiffs Clement VIII and Alexander VII, dated November 24, 1603, and May 15, 1664 (1). "Concerning what should be called Clerics residing in the City, and what conditions they must observe, both with regard to examination concerning knowledge, and with regard to benefices, etc., this has been sufficiently declared in the following decree of the particular Congregation appointed by the same Alexander VII in the year 1668, registered in the book of records from the year 1662 to the year 1673, page 221, in the Secretariat of the Tribunal." Doubts and declarations concerning those to be ordained outside the City. In the particular Congregation held by order of the Most Holy, before the Most Eminent Cardinal Vicar, concerning the edicts, lest Clerics residing in the City seek advancement outside the City, unless they have been examined and approved in the City, the following doubts were discussed by the Illustrious and Reverend Monsignors, Monsignor de Angelis, Vicar General, Monsignor de Vecchis, Monsignor de Rubeis, and by the Very Reverend Fathers of the Society of Jesus, Father

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De Comites, and Father De Lauria of the Order of Minor Conventuals, and the following were resolved, as indicated below. I. "Who are to be considered Clerics residing in the City, for the purpose of being included in the aforementioned edict?" Response: Those who reside in the City, and who have resided there for at least four months. (i) We inquired and found in the Archive of the Secretariat of the Vicariate of the City, in the book of records from the year 1662 to the year 1673, page 221 on the reverse, that such edicts are expressed in these very words, so that one is no different from the other, but is merely a repetition of the former. The first edict of Clement VIII is as follows: "To all and each Clerics, now and in the future, residing in the City, and who wish to be promoted to the Minor Orders or even to the Sacred Order of the Priesthood, by the mandate of the Most Holy Lord Pope Clement VIII, by the living oracle of his will, we decree and command that, from now on, they shall not, outside of the same City, even by virtue of their letters of dismissal from their Ordinaries, or by any other means, seek to be promoted to said Orders, unless they have first been found suitable by Examiners appointed in the City, and have been approved, and have obtained permission in writing from us. Those who do otherwise shall be suspended from the reception of Orders, unless they obtain from the Most Holy Lord Pope and the Holy Apostolic See the grace of absolution and dispensation, decreeing that the execution of this present shall affect everyone, in the usual places, by distributing copies of it, as if it had been personally notified or shown to each individual. In witness whereof, etc." Given in Rome, on the 24th day of the month of November, 1603. "24th of the month of November, the Bishop, Vicar General."

[*Latin ed. p. 587*]

CONCERNING CLERICS 587 IT. "Do clerics residing in the City, who present themselves to their proper Ordinary and receive Orders from him, without having been previously examined in the City, fall under the aforementioned decree? Answer: They do not fall under the decree, if they receive Orders from their own Ordinary; otherwise, if they are ordained by another, even by virtue of the dismissal granted by their own Ordinary. III. "Do clerics residing in the City, who are rejected by the Examiners of the City, but who receive Orders from their proper Ordinary, incur the penalties of the Decree? Answer: Clerics who are disapproved by the Most Eminent Lords, the Cardinal Vicars, incur the penalties of the Decree, even if approved by their own Ordinary, and if they receive Orders from the same. IV. "Can clerics residing in the City be ordained even by Bishops of the Domicile, Benefice, and by him to whom three years of service have been personally rendered, according to the form of the Sacred Council of Trent, session 23, chapter 9, without having been previously examined and approved by the Examiners of the City, as stated in the aforementioned Decree? Answer: Clerics residing in the City are rightly ordained by the

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Bishops of the Domicile, Benefice, and of the three years of service rendered, provided that they are ordained by those same Bishops according to the form of the Sacred Council of Trent. However, given the current disposition of the Roman Council, Title G, concerning the age and qualifications of those who wish to be promoted outside the City with the title of Benefice, they are required to undergo an examination before the Examiners of the City, if they intend to return to this City (1). / (1) These things, which the Honorable one points out here, are certain when dealing with those "who have their domicile in Rome, according to the norm of the Constitution of Innocent XII, which begins with Speculatores; but it cannot be stated with the same certainty regarding those who only reside in Rome, and who have their domicile in another diocese of Italy. The following is the text of chapter 4 of Title 6 of the Roman Council: concerning their birth, age, life, and morals, according to the blessed and revered Constitution of Pope Innocent XII, which begins with Speculatores, they must undergo an examination before the Bishop of the Domicile, if they are to return to his diocese, regarding their knowledge and suitability, as has been said, and no testimonial letters whatsoever will be granted, unless they have undergone a prior, aforementioned examination and are deemed worthy of Orders. Furthermore, those who have their domicile in one diocese, and have obtained a benefice in another, and who request to be promoted to that title by the Bishop in whose diocese the benefice is located, must, in addition to testimonial letters, be deemed worthy of approval. The benefice must be sufficient for a suitable livelihood, so that it is absolutely, according to the established rate, custom, and of the diocese to which the one being ordained is to return, considered sufficient."

[*Latin ed. p. 588*]

588 CONCERNING CLERICS. Q. Whether a benefice ought to be of such a nature as to provide for the needs of the cleric to whom it is granted, or whether a small benefice suffices, provided that the deficiency in its income is made up by the endowment of a patrimony. R. Even a small benefice suffices, provided that the cleric is endowed with a sufficient patrimony. However, this is clearly contradicted by the Innocentian Constitution, according to which the benefice must be sufficient, and also by the decree of the Sacred Congregation of Councils, dated July 9, 1701, in Alatri, which decree we quoted at length in the preceding Chapter XV (1). (i) These points do not seem to have been properly considered by Honoratus; for although in the Constitution of Innocent XII, *Speculatores*, it is written: "Any faculty for supplementing what is lacking in the fruits of the same benefice, with the addition of a patrimony, even a large one, shall be abolished," this refers to those who wish to be ordained with a benefice that they hold in another diocese. Furthermore, the author did not notice that such a Constitution could not have been unknown to that particular Con-

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gregation, which is accustomed to discussing matters of doubt and issuing resolutions, a resolution which was subsequently confirmed by Alexander VII and then by Benedict XIV, as will be seen below; nor is the resolution of the Sacred Congregation of Councils in Alatri relevant to the present matter, the details of which are as follows, as reported by Honoratus himself: "In Alatri, Damianus, a Benedictine cleric of Rome, requested the Bishop to promote him to the sacred orders on the basis of the title of a benefice he held in the diocese of Alatri, but he was refused under the pretext that, although the income of the said benefice was sufficient according to the custom of the region and the synodal tax of Alatri, he could not be promoted unless he had a sufficient patrimony, according to the custom of Rome, since he was born, educated, and had always resided in the city. Therefore, the aforementioned Damianus, invoking the clear disposition of the aforementioned holy Constitution of Innocent XII, § 5, requested that it be declared whether a patrimony sufficient according to the custom of the place of origin should be established in the present case, or rather, according to the custom of the place where the benefice is held." On July 9, 1701, the Sacred Congregation of Councils, after hearing the report of the Bishop, etc., rejected the request and decided that a patrimony should be established according to the Roman style. This was also declared by the same Sacred Congregation of Councils in another session, on January 19, 1705, and confirmed by the recent Council of Rome, Title 6, on age and qualifications of those to be appointed, chapter 4. These are the words of Honoratus; but if we were dealing only with the present question, the following should not be overlooked, as written by the Blessed XIV in the Synod, diocese I, 12, n. 9: "With regard to the title of a benefice, Innocent XII, in the famous Constitution *Speculatores*, decreed that no one can be ordained by a bishop in a foreign diocese to a benefice held there."

[*Latin ed. p. 589*]

CONCERNING CLERICS. 589 VI. "Do the words of this Edict, or of any other, include Clerics residing in the City, who, by virtue of *Apostolic Briefs* issued outside of the usual times, are moved outside the City? Answer: The Clerics residing in the City, who are moved outside the City by virtue of *Briefs* issued outside of the usual times, are included in the aforementioned Edict. And after a report was made to the Most Holy [Pope] regarding the aforementioned doubts, and their resolutions; the Most Holy [Pope] benignly approved these resolutions, and ordered that they be observed by all in the future. F. de Angelis, Archbishop of Urbino, Vicegerent."

"However, despite the aforementioned Edicts and declarations, some Clerics are afraid to accept ordained positions outside of the City, without a preliminary examination in the same City, and without obtaining permission from the Most Eminent Vicar, after having resided in the City for four

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months, as prescribed by the prudent ordinances of the Most Holy [Pope] Benedict XIV in the Edict dated December 2, 1740; therefore, the Most Holy [Pope] Benedict XIV, confirmed and renewed the aforementioned Edicts, and introduced another Edict, which we have fully recounted at the beginning of this book (1).

(1) Paullo severior fuit confirmatio redditus subministret, qui detractis onedictorum Decretorum facta a Benediribus, ad congruam eiusdem sustentacto XIV., per edictum quod sequentis Sionem sufficiant. Excitata deinde controversia an sufficientia esset praefinita «-Cum inter Clericos alienigenas ad normam taxae synodalis vigentis in in hac Alma Urbe degentes, abusus •dioecesi domicilii, an potius in eadem irrepserit, ut ad declinandas providas dioecesi, ubi situm est Beneficium, Ordinationes a SS. D. N. Benedicto XIV. Sacra Congr., ut eam dirimerei, hanc pro Promovendis in Urbe, nuperrime adhibuit distinctionem : aut Beneficium praescriptas, posthabitis sanctionibus continuam exposcit et perpetuam resisan. mem. Clementis VIII. et Alexan. dentiam ; aut eiusmodi obligationis viadri VII. sub diebus 21 Novemb. 1603 et culo BeneGciarium non obstringit: si se15 Maii 1664 una cum declarationibus particularis Congregationis de an. 1668 taxa synodali, praefinita in loco , ubi Beneficarius domicilium habet : si pridesuper respective editis , nullo praemisso examine coram Examinatoribus •mum a taxa praescripta in dioecesi, in qua Beneficium possidet. » Haec Bene•dictus XIV. eruit ex pluribus Respon- in Urbe deputatis, nullaque a Nobis reportata licentia ad Minores, et Sacros etiam Presbyteratus Ordines, sub ob- %\& S. C. C. tentu dimissorialium suorum Ordina-

"Regarding the sufficiency of the tax, the Sacred Congregation, in order to resolve this matter, made the following distinction: whether the tax is to be determined according to the diocese in which the Cleric resides, or according to the diocese in which the Benefice is located; this distinction was introduced by the Most Holy [Pope] Benedict XIV, in the City of Rome, most recently, after setting aside the sanctions of the Most Holy [Popes] Clement VIII and Alexander VII, dated November 21, 1603, and May 15, 1664, together with the particular declarations of the Congregation of that year, 1668, as previously published in this place, without any preliminary examination before Examiners appointed in the City, and without any license reported to us for the Minor Orders, and even for the Sacred Order of the Priesthood, subject to their respective dispensations."

[*Latin ed. p. 590*]

590 CONCERNING CLERICS. "Therefore, those who, contrary to the established form of the Edict, are promoted to the Orders outside the Roman Curia, incur a perpetual suspension reserved to the Apostolic See by this very act; and if they presume to minister in the Orders they have received, they also incur irregularity. Formerly, absolution from such a suspension, and likewise a dispensation from the irregularity, was granted by Apostolic

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Letters in the form of a Brief, as appears from the books of Decrees of the Secret Tribunal; but in recent times, appeals have been made from this to the Sacred Congregation of the Council, from which, after hearing the information of the Eminent Vicar, absolution and dispensation are granted. Appeals are also made to the Supreme Pontiff, who likewise refers the granting of absolution from such censure, and a dispensation from the irregularity, to the judgment of the same Vicar, from whom those who appeal are not absolved, unless they have previously been found suitable and approved by the aforementioned Examiners of the City, and have devoted themselves to spiritual exercises in the house of the Mission for ten continuous days. Those who are promoted to the Orders outside the Roman Curia should not fear the censures and penalties, laid down by the aforementioned decrees, but should be aware of their own conscience. Therefore, in order to prevent such frauds, by the oracle of our living voice, we renew the aforementioned decrees and declarations; we strictly command and enjoin all and each Cleric who, in this illustrious City, for any reason whatsoever, has resided for more than four months, now and in the future, not to presume to ascend to the aforementioned Orders outside of that same City, even by virtue of their letters of dismissal from their Ordinaries, or by any other means, unless they have previously obtained permission from the aforementioned Examiners, having been found suitable and approved by them. If this is done, not only will the promoting Bishops be forbidden from exercising their pontifical functions for a year, but those who are thus promoted will also be suspended from the execution of the Orders, and will remain so, until they have obtained the grace of absolution and habilitation from the Holy Apostolic See. However, by the foregoing, it is not forbidden to Clerics who return from the City to their own Ordinary, to receive the Orders; but those who have once been disapproved by the aforementioned Examiners of the City, should know and understand that they are also subject to the same law in relation to their own Ordinary. And so that no one may allege ignorance of the foregoing, we decree that these present be affixed in the usual places, so that they affect everyone as if they had been personally notified or shown to each individual. Given at Rome, from our dwelling, on the 20th day of March, 1743. F. G. A. Cardinal Vicar. G. Archpriest. Ori Secret. (t) Today this is no longer observed, and it rarely happens that what is said here about spiritual exercises occurs.

[*Latin ed. p. 591*]

CONCERNING CLERICS. 591. It must, however, be noted that if anyone, after having resided in the same city for more than four months, having completed his business or studies, returns to his homeland, not with the intention of precisely receiving the Orders, but with the intention of remaining there permanently, he will, in that case, if his own Ordinary is hindered, or if he is not able to administer the Orders himself, be able, with

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the letters of dismissal from him, to receive the grace and communion of the Holy Apostolic See from any other Catholic Bishop, residing in his own diocese, or in another diocese with the consent of the local Ordinary, without undergoing the examination in the aforementioned city, nor obtaining permission from the Vicar of the city, and both he and the Bishop ordaining him will incur the penalties mentioned in the aforementioned Edict*, and the reason is: because in that case, neither fraud nor deceit is involved in any way. Furthermore, it would be a law too harsh and burdensome, especially with regard to those from afar, if, after having resided in the city for the aforementioned period, at any future time (if his own Ordinary is legitimately hindered, or if he is not able to administer the Orders himself, as are all Abbots and Priors, etc., who, although they may grant letters of dismissal for the reception of Orders, are nevertheless not able to confer the Orders themselves, but are obliged to direct their own subjects to nearby Bishops, or even to others, according to Apostolic Privileges), they were entirely obligated to come to the city to receive the Orders, or at least to undergo the examination, and it cannot be supposed that the Supreme Pontiffs intended to obligate such individuals, (without any deceit or fraud involved), to do so with such inconvenience and expense (1). (1) But, for the sake of completeness, the author wrote the following: It is not the intention of the law to restrict the power of Ordinaries over their subjects, who may wish to receive the sacred Orders in their own diocese; but this law is intended to prevent abuses, which easily arise from the excessive freedom in granting Orders, and especially from the contempt that might arise if, having obtained letters of dismissal from their own Ordinary, after a brief stay in Rome, they would disregard the principal Catholic city, refuse the Vicar of the Bishop of Bishops, and, neglecting the laws specially established for the sacred Order to be observed in Rome, would seek another external Bishop from whom they might more easily obtain the Sacrament of Orders. But this cannot be said of those who return to their own Ordinary: nor can it be said that they are acting fraudulently, who return in order to perhaps avoid the examination in Rome: for it cannot be said that one acts fraudulently, who uses his right to avoid some effect of the law; for everyone has the right to request his diocese, and to receive the Orders from his Ordinary.

[*Latin ed. p. 592*]

392 CONCERNING CLERICS. "It must also be noted that, under this law, the Regular clergy are not included, nor are laymen, since no mention of these is made in the edicts. Therefore, those who have not received the first Tonsure, even if they have remained in the city for four months, or for any other period of time, are not subject to the aforementioned law. FROM THIS, ONE MAY GATHER: I. That those who come to Rome and reside here for four months, if, having obtained letters of dismissal, however ex-

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tensive, from their own Ordinary, they desire to be promoted to the Orders, they cannot be excused from undergoing the examination in Rome, nor can they receive the Sacrament, which is administered here, or the Ordination, without obtaining written permission from the Most Reverend Vicar of the City. II. That he who, by means of the same letters of dismissal, does not return to his own Ordinary, but seeks another diocesan Bishop outside the city, and receives the Orders from him, is thereby suspended from the execution of the Orders, and will remain suspended until the censure is lifted by the Holy See. III. Indeed, even he will fall into suspension who, having been disapproved in the "examination in Rome," and having not obtained any permission, nor having renewed the examination in Rome, returns to his diocese and is received into the Orders by his Ordinary, or by one from whom he can receive them by the authority of the Ordinary, since he is no longer specially subject to that place, and an impediment would arise. Furthermore, there would be a certain deceit, or rather, a blatant contempt of authority, if someone who has been disapproved in the "examination in Rome" were to return to his Ordinary, and be approved and ordained. However, it rarely happens that those who are sufficiently instructed with the knowledge required for receiving the Orders are disapproved in the examination in Rome: for the Examiners possess great discretion and humanity.

[*Latin ed. p. 593*]

FROM THE PROCEEDINGS OF THE CONSISTORY, CONSISTORY PROMOTIONS. The account follows of those vacant churches to which Bishops were appointed in the sacred Consistory on February 22, 1867, "and on the following day, March 27 of the same year. The following churches were proposed by the Most Holy Father: THE METROPOLITAN CHURCH OF TAU- The archiepiscopal palace is located a short distance from RINEN, vacant due to the death of the venerable Archbishop Fransoni; to which the Reverend Father Alexander Riccardi, formerly Bishop of Savona, was appointed. Augusta Pedemonti! The city of Turin, situated near the mountain where Durium flows into the Po River, has an area of approximately six miles, and contains more than one hundred and fifty inhabited places, encompassing numerous neighborhoods and villages. The Metropolitan Cathedral of Augusta, belonging to the ancient province of Piedmont, vacant due to the death of the venerable Bishop Andrea, is of the best structure in the Archdiocese, which contains thirty thousand souls, with monasteries for men and two for women, parish churches equipped with baptismal fonts, and other churches. Turin, or "celeberrima Taurini titulo," is located a short distance from the Po River, in a fertile plain. Besides the Metropolitan, there are thirteen suffragan Bishops. The Reverend Father James Joseph, a priest of the Diocese of Augusta, was promoted; he holds the dignity of Praepositus of the

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Chapter, and has a doctorate in both Canon and Civil Law, and has diligently performed ecclesiastical duties, having been appointed General Vicar; the Vicariate General resides with the Chapter. The care of souls in the Cathedral is perpetually entrusted to the dignity of the Capitular Praepositus. Augusta Praetoria, a city in Piedmont, is located near the metropolitan temple, where the borders of Piedmont and Italy are found, and has a circumference of approximately three miles, with more than one thousand inhabitants. The Acts, II, volume, phase XXII, page 39, assert that it is located in a mountainous and fertile area, and is inhabited by nearly five thousand souls.

[*Latin ed. p. 594*]

PROMOTIONS BY THE CONSISTORY. The Cathedral of the Assumption of the Blessed Virgin Mary, with the title of Bishop of Turin, is suffragan. Its chapter comprises two dignities, the first being the Prebend, and nine canons, along with chaplains and other priests serving in the divine ministry. The care of souls resides with the chapter, which is exercised by one of the canons elected by the chapter and approved by the Bishop, in the Cathedral, where there is a baptismal font, etc., and among the sacred relics, especially the bodies of the blessed Gratus and the revered remains of the pastors and patrons of that city, and also the relic of St. John the Baptist, are religiously preserved; it also has a cemetery outside the city. There are thirteen beneficed priests, other priests, and clerics serving in the divine ministry. The care of souls is not exercised in this metropolitan church, although there is a baptismal font there for the convenience of all; several relics of the saints are kept there, among them those of St. Cecilia and St. Victor. The Archbishop's palace is not far from the metropolitan church. In Messina, there are thirteen parish churches with baptismal fonts, two of which are also collegiate; there are eighteen monasteries for men and seventeen for women; there are seven lay sodalities, a hospital, a pawnshop, and a seminary. The episcopal palace is located near the Cathedral. In addition to the Cathedral, there are two other parish churches in Augsburg, both with baptismal fonts; there is one monastery for men; an orphanage, several lay sodalities, a hospital, and a seminary; a pawnshop is desired. The extent of the diocese is quite broad, encompassing many parishes. The Archdiocese extends very widely and includes many places.

THE CATHEDRAL CHURCH OF BAYEUX. The position of Bishop of Bayeux was vacant due to the death of the venerable memory of Bishop Charles Didiot, and the Reverend Flavian Hugonin was appointed to it by the grace of the Most Holy, following the nomination of the Most Serene Emperor of the Gauls. The same was promoted from the priesthood of the diocese of Gratianopolis, and he has commendably exercised his ecclesiastical duties, especially in preaching the Word of God and administering the sacraments to the faithful; for several years, he taught sacred theology at

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the University of Paris, and he presided over the chaplains of St. Genevieve and the school known as the Higher Studies.

THE METROPOLITAN CHURCH OF MESSINA. The position of Bishop of Messina was vacant due to the death of the venerable memory of Francis de Paula, a priest of the Holy Roman Empire, and Cardinal, and the Reverend Aloysius Natoli, formerly Bishop of Caltagirone, was transferred to it. Messina is a large and ancient city of Sicily, located in the valley of Demona, on the eastern side of the island, with a port, and due to the mountains that surround it, it has an elongated shape; within its area of almost two Roman miles, it contains over a thousand houses, and together with its extensive suburbs, it encompasses seventy-five thousand inhabitants. The metropolitan church is dedicated to the Blessed Virgin Mary, and three bishops are suffragan to it. Its chapter comprises three dignities, the first being the Deanery, and fifteen canons, including a Penitentiary.

BAYEUX, or Baiocum, a city of Normandy, now commonly called Calvados, contains over ten thousand inhabitants and is under temporary French rule. The Cathedral church is of Gothic structure and is dedicated to the Blessed Virgin Mary, and is suffragan to the Archbishop of Rouen. Its chapter comprises nine canons, including a theologian and a Penitentiary, one of whom is called the Grand Cantor; there are several honorary canons, and other priests, including some alumni.

[*Latin ed. p. 595*]

PROMOTIONS AND ESTABLISHMENTS. Real seminaries are added to the solemn days for divine service. Through the Canon-Archpriest, the care of souls is exercised in the Cathedral, where there is a baptismal font, etc., among the relics of the Saints, specifically of some Bishops of Bayeux, and the body of St. Eutychius the Martyr, found in the Roman catacombs, are religiously preserved: the cemetery is located outside the city. Adjacent to the Cathedral is the episcopal palace. Besides the Cathedral, there are two other parish churches within the city of Bayeux, and as many outside it, all equipped with baptismal fonts: there are three communities of women, sisters dedicated to the education of girls and the care of the sick; there are Brothers dedicated to the Christian education of boys; there are several lay sodalities, a hospital, a large seminary in the city, and three others in the diocese: but a pious foundation is desired. The extent of the diocese encompasses the entire province of Calvados and nearly five hundred thousand inhabitants.

THE CATHEDRAL OF EICHSTÄTT. The position was vacant due to the death of the venerable Bishop George of Oettl, and the Reverend Francis, Baron of Leonrod, was promoted to it through the kindness of His Holiness, upon the nomination of the Most Serene King of Bavaria. The same was promoted from the priesthood of the Archdiocese of Bamberg, where he devoted his talents to ecclesiastical duties: he was appointed as a cooperator in

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the parish of Eutenhausen, and subsequently in the Cathedral of Eichstätt, where he later became a choir vicar; he also relinquished his position as ordinary preacher, and has served as pastor of St. Zeon in the Archdiocese of Munich until now. Eichstätt, or Eychstätt, is a town in the district of Middle Franconia in the Kingdom of Bavaria, situated in a narrow valley near the Altmühl River, and contains over a thousand houses, inhabited by more than seven thousand souls. The Cathedral church of the Blessed Virgin Mary, assumed into heaven, is a Gothic structure and serves as the suffragan of the Archbishop of Bamberg. Its chapter has two dignities, the first being the Provost, and eight canons, including a theologian and a penitentiary, as well as six vicars and other priests serving in the divine ministry. Through the chapter's vicar, the care of souls is exercised in the Cathedral, where there is a baptismal font, etc., and the nearly complete body of St. Willibald is religiously preserved; there is a cemetery outside the city. Not far from the Cathedral is the episcopal palace. Furthermore, there is a parish church of St. Walburga in Eichstätt, equipped with a baptismal font, a monastery for men, and another for women; there are several lay sodalities, a hospital for the poor with a parish without a baptistery, and a seminary; but a pious foundation is desired. The extent of the diocese is very wide, encompassing over two hundred parishes and one hundred fifty-eight thousand souls.

THE CATHEDRAL OF ALBA-REGALEN. The position was vacant due to the death of the venerable Bishop Emericus Farkas, and the Reverend Vincent Fekelfalusy was promoted to it through the kindness of His Holiness, upon the nomination of His Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary. The same was promoted from the priesthood of the Archdiocese of Agriensis, where he successively governed three parishes in the Archdiocese of Strigonia: he was formerly elected as a canon in the Metropolitan Chapter, and before that, he was co-opted among the canons of the collegiate church of St. Martin in Pressburg, where he is currently the Provost; he has also served as a counselor in the royal advisory council for several years, and in ecclesiastical matters.

[*Latin ed. p. 596*]

596 CONSISTORIAL APPOINTMENTS. He devoted himself to fulfilling these functions. Alba-Regia, or Alba-Regalis, the very ancient royal city of Hungary, located in the County of the same name, formerly the seat and mausoleum of the Kings of Hungary, situated in a pleasant plain, has a circuit that contains over one thousand seven hundred houses, and is inhabited by six times sixteen thousand citizens who profess the Catholic religion, under the temporary dominion of the aforementioned Most Serene Emperor and King. The cathedral church, of elegant structure, is dedicated to St. Stephen, the King, and serves as a suffragan to the Archbishop of Strigonium. Its chapter numbers eight canons, with two prebends to be

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filled, among whom are four dignities, the first of which, after the pontifical office, is the Major Prebend; there are also six honorary canons, and several other priests and clerics who dedicate themselves to the service of the Divine. The parish priest, not belonging to the chapter, cares for the souls in the same cathedral, where there is a baptismal font, etc., and among the relics of the saints, the skull of St. Stephen, the King, is religiously preserved; it also has two cemeteries. Not far from the cathedral is the episcopal palace, located in the center of the city. Furthermore, there is another parish church in Alba-Regia, equipped with a baptismal font; there are two monasteries for men and one for women; there are two hospitals, a seminary; and a place of piety is desired. The extent of the diocese extends through the County of Alba-Regia, and part of the Pest-Pilis region, and includes under its jurisdiction ninety-two parishes, and over thirty dependent chapels.

THE METROPOLITAN CHURCH OF STRI-ei. The Most Reverend Cardinal Scitovszky, a priest, deceased outside the Roman Curia, proposed the name of the Reverend Father John Gonien, transferred from the church of Iaurinen to fill the vacancy caused by the death of Simon, for the nomination of the Sacred Caesarean Majesty Francis Joseph I, Emperor of Austria, King of Bohemia, and Apostolic King of Hungary. Strigonium is a city of Hungary, located in the County of the same name, near a mountain on the right bank of the Danube, containing approximately one thousand houses, and numbering almost twelve thousand inhabitants, who obey the aforementioned Most Serene Emperor and King in temporal matters. The metropolitan church, which is also a basilica, is located on a hill, dedicated to the Blessed Virgin Mary, assumed into heaven, and to St. Albert, Bishop and Martyr, and boasts a spacious, outstanding, and modern structure. Ten bishops are suffragan to it. Its chapter numbers seven dignities, the first of which, after the pontifical office, is the Major Prebend; there are fifteen canons, with two prebends, and other priests and clerics who serve the divine. Through one of the chapter members, the care of souls is exercised in the metropolitan church, where there is a baptismal font, a sacristy abundantly equipped with sacred furnishings, several notable relics of the saints, religiously preserved, and also a choir, an organ, etc., and a cemetery outside the city. There are two houses in Strigonium for the Archbishop, not far from the metropolitan church, suitable and convenient. In addition to the metropolitan church, there are three other parish churches in Strigonium, equipped with baptismal fonts; two for men, and one for women; there are several hospitals; a place of piety with extensive foundations for the poor, orphans, and those converted to the Catholic faith, under the administration of the metropolitan chapter; and a seminary. The archdiocese extends through nine counties, and includes almost nine hundred

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thousand Catholics.

[*Latin ed. p. 597*]

PROMOTIONS WITHIN THE CATHEDRAL OF SZATHMAR. Vacant due to the death of the venerable memory of Bishop Michael Haas, to which the Reverend Ladislaus Biro de KezdiPolany was promoted, through the benevolence of His Most Holy Majesty, in accordance with the nomination of the Most Reverend Cardinal Francis Joseph I of Austria, Apostolic King of Bohemia and Hungary. The same, having been promoted from the priesthood of the diocese of Szathmar, a Doctor in both philosophical and theological disciplines, diligently performed ecclesiastical duties: he served as a Professor of Biblical Studies and Rector of the diocesan seminary, and was co-opted among the Collegiate Doctors of the Royal Hungarian University. He also served as Assessor of the Consistorial Seat of Szathmar, Superior of the Institute of the Sisters of St. Vincent, a court advisor, and a Referendary to the Royal Hungarian Court. He had previously resigned from his positions as Cathedral Cantor and Canon, and was then honored with the title of Apostolic Protonotary. Szathmar, or Szathmar-Nemethi, a city of the Kingdom of Hungary, located in the county of the same name, built on a wide and fertile plain near the Samus River, contains over fourteen thousand inhabitants, of whom approximately four thousand profess the Catholic religion, under the temporary dominion of the aforementioned Most Serene Emperor and King. The Cathedral church, beautiful and quite spacious, dedicated to the Ascension of Our Lord, exhibits a Byzantine structure and is a suffragan of the Archbishop of Agri. Its Chapter consists of six members, including a Theologian and a Penitentiary Canon, among whom four hold dignities, the first of which, after the pontifical office, is the Major Prefect, and the others are priests and clerics serving in the divine ministry. The care of souls is exercised by a parish priest in the Cathedral, where there is a baptismal font, etc., and there are also some notable relics of the holy martyr Vincent. A cemetery is located outside the city.

CONSISTORIAL. 597. The episcopal palace is located near the Cathedral. In Szathmar, there is also a parish church of the Latin rite, a religious house for women, a hospital, an episcopal residence, and a seminary with students; however, a house of piety is lacking. The diocese encompasses five counties, includes many parishes, and comprises over ninety-eight thousand Catholics.

THE CATHEDRAL OF MUNKACSI. Of the Greek Rite, united with the Holy Roman Empire, vacant due to the death of the venerable memory of Bishop Basil II Popovics, to which the Reverend Stephen Pankovics was promoted, through the benevolence of His Most Holy Majesty, in accordance with the nomination of the Most Reverend Cardinal Francis Joseph I. The same, having been promoted from the priesthood of the diocese of Munkacsi, was chosen to administer the sacraments to the Greek-Catholic

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faithful, and diligently performed laudable duties in ecclesiastical functions; he served as Assessor at the Consistorial Seat of Munkacsi, as a Professor of civil law, and as a Referendary to the Royal Hungarian Council in literary matters. Unghvarinum, where the seat of the Bishop of Munkacsi is located, is a town of the Kingdom of Hungary and the capital of the county of the same name, in the district of Cis-Tibis, situated on the Ungh River in a pleasant and fertile area, and within its area, which comprises a quarter of a square German mile, there are over six hundred houses and it is inhabited by over nine thousand people, of whom one thousand four hundred are Greek-Catholics, and are under the temporary dominion of the aforementioned Most Serene Emperor. The Cathedral church, dedicated to the Exaltation of the Holy Cross, exhibits a Byzantine structure and is a suffragan of the Archbishop of Gran. Its Chapter consists of four members, the first of whom is the Archpriest.

[*Latin ed. p. 598*]

598 CONSISTORY PROMOTIONS. The Major Prefect is assisted by three Scholastic or Theological Canons, without the assignment of a Penitentiary; furthermore, there are twenty additional Priests with Clerics who serve in the divine offices. Through the Parish Canon, the care of souls is exercised in the Cathedral, in which there is a baptismal font, etc. The house for the Bishop's residence is connected to the Cathedral. Besides the Cathedral, located on a hill within the Muslim area, another parish church with a baptismal font is found in the town of Unghvarini. Furthermore, there is the confraternity of St. Ladislaus, a hospital, and a seminary with students; however, a house of piety is desired. The diocese extends to seven counties and has more than three hundred and seventy parishes, more than one thousand chapels, and nearly three hundred and ninety-three thousand Greek-Catholics. The territory of St. Genesius of Camerino was formerly part of this archdiocese; however, the late Reverend Mr. Forocorneliensis, an auxiliary bishop, resigned from his office through letters. Lystra, a city in Lycaonia, formerly Isaura in Galatia, is now almost completely destroyed and still suffers greatly under the yoke of the faithful.

THE EPISCOPAL CHURCH OF TRIPOLI. Located in areas held by infidels, this see was vacant after the succession of the Reverend Father John William to the Cathedral seat of Baston. The Reverend Father Philip Manetti, a Priest of the Sutrina diocese, was promoted to this see. He received a doctorate in sacred theology at the Roman archigyumnasium, where he also obtained a license in both laws and has worked in ecclesiastical offices; he was previously the Archpriest of the church of Monte Santo in the esteemed city, but has now resigned.

LYSTBEN. The city of Tripolis, an episcopal city of Phoenicia, located near the river Xanctum, is under the jurisdiction of the Archbishop of Tyre and is held by infidels. Vacant after the translation of the Reverend Father

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Joseph Ignatius Cbeca to the cathedral seat of Ibares, the Reverend Father Conceptus Focaccetti of the Archdioceses of Firmana was promoted to this see. He was chosen for the clergy of the Camerinese Archdiocese, where he became a Priest and received a bachelor's degree in sacred theology, and has devoted himself to ecclesiastical functions. Among the Canons, the see of St. Mary Transpontina, vacant in areas held by infidels due to the assignment of a titular presbyter, was given to the Most Reverend and Noble Gustavo Adolphus Cardinal de Hohenlohe, to whom the Reverend Father Joseph Cardoni, the Bishop of Lauretanus and Recanati, was transferred.

Edessa, an ancient and extensive city of Mesopotamia, still suffers greatly under the yoke of the infidels.

THE EPISCOPAL CHURCH; THE ARCHIEPISCOPAL CHURCH OF EDESSA. Among other things, the Supreme Pontiff provided information about those Bishops who, since the last Consistory, had been appointed by the Sacred Congregation for the Propagation of the Faith to vacant churches, and also about the prelates who were appointed by Apostolic Letters in the form of a Brief to the following churches.

THE METROPOLITAN CHURCHES OF COLOCEN AND BACSIEN, canonically united in Hungary, were filled with the Reverend Father Joseph Lanovics, who was transferred from the archiepiscopal church of Amasien, located in areas held by infidels.

THE METROPOLITAN CHURCH OF ARMA, in Ireland, was filled with the Reverend Father Michael Kieran.

THE ARCHIEPISCOPAL CHURCH OF BOSTRUM, located in areas held by infidels, was filled with the Reverend Father Walterus Steins, who was transferred from the episcopal see of...

[*Latin ed. p. 599*]

PROMOTIONS BY THE SACRED CONGREGATION. The Nilopolitan Church.

599. THE CATHEDRAL CHURCH OF GULBORNEN, in South Australia. The Reverend Mr. William Lanigan.

THE GERMANIC EPISCOPAL CHURCH, in parts outside the faith. The Reverend Father Charles Laroque, transferred from the Church of St. Hyacinth in Canada. Subsequently, a petition was made for the granting of the Sacred Pallium for the metropolitan Churches canonically united of Colocensi and Bacsiensi, and for the Churches of Strigoniensi and Armacana.

FROM THE CONSISTORY HELD ON THE TWENTY-SEVENTH OF MARCH, MDCCCLXVII. After the Most Holy Father had decreed the inscription of the Blessed Germana Cousin, a virgin of the secular life from the town of Pibrac in the diocese of Tolosanae, in the Catalogue of Saints, and after the Cardinals had given their votes according to the customary form and the following solemnities, the vacant churches were proposed:

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THE METROPOLITAN CHURCH OF MEDIOLANUM, vacant through the voluntary and willing resignation of the Reverend Father Paul Ballerini, which he placed in the hands of the Roman Pontiff, and which was accepted by him. To this church, the Reverend Father Aloysius Nazari, formerly the Bishop of Casalensis, has been transferred.

Mediolanum, the most famous city of Italy and the capital of Lombardy, is built on a plain between the rivers Abduam and Ticinum, and has a circumference of almost ten miles, and is inhabited by more than one hundred and eighty thousand citizens. Through this Archbishop, assisted by five priests, the care of souls is exercised in the Metropolitan Church, where there is a baptismal font, etc., and among the sacred relics are the bodies of St. Ambrose, Bishop and Doctor of the Church, and of St. Charles Borromeo, Archbishop and patron of the same city, and others are religiously preserved. Outside the city, there are several cemeteries. The Metropolitan Church, known for its excellent Gothic structure, boasts the title of the Nativity of the Blessed Virgin Mary, and has eight suffragan bishops. It has a Chapter of four, and among its dignitaries, after the pontifical, the first is the Archpriestship, followed by twenty-four Canons, including a Theologian, a Major Penitentiary, and a Doctor. Twenty-four priests are counted in the parishes of Mediolanum, which have baptismal fonts, and one of these churches, under the invocation of St. Ambrose, is also a Collegiate Basilica. There are also several monasteries of men and women, a few convents for the education of girls, some lay sodalities, three hospitals, several charitable institutions, and two seminaries.

[*Latin ed. p. 600*]

PROMOTIONS WITHIN THE CONSISTORY. The Archdiocese encompasses a very wide area and includes more than seven hundred and sixty parishes. The CATHEDRAL CHURCHES of ICVENACIUM, MELFI, and TEBLITIEN are perpetually and canonically united, having become vacant through the death of Bishop John Constantine, after which the following promotions occurred. The Reverend Nicholas Guida, formerly of the Archdiocese of Compagna, was appointed, having performed many distinguished services and possessing numerous merits. Melfi, also known as Molfi and Morfi, is a city in Apulia, in the province of Bari, within the Kingdom of Naples, built on a flat area near the Adriatic Sea. It has a circumference of approximately three miles, contains about one thousand houses, and has nearly two thousand inhabitants. Iuvenacium, another city in the same province, located on a hill near the Adriatic Sea, has a circumference of approximately one mile and a population of about seven thousand. Turricium, also known as Terlizzi, a city in the aforementioned province, has a circumference of approximately one and a half miles, contains about two thousand houses, and is inhabited by approximately fourteen thousand citizens. Each of these cities has its own Cathedral

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Church, dedicated to the Assumption of the Blessed Virgin Mary, and are immediately subject to the Apostolic See. The Chapter of Melfi has six dignities, the first of which is the Archdeacon, and includes eighteen Canons, including a Penitentiary and a Theologian, ten of whom are priests, and eight are deacons, thirty-six Mansionaries or Chaplains, and a choir. The Chapter of Iuvenacium has four dignities, the highest of which is the Archdeacon, and includes sixteen Canons, including a Theologian and a Penitentiary, and twenty Mansionaries. The Chapter of Terlizzi has five dignities, the first of which is the Archdeacon, and includes twenty-two Canons, including a Theologian and a Penitentiary, and the same number of Mansionaries or Chaplains. In each Cathedral, there are other priests and clerics who minister to the faithful. Through one of the Canons of the priestly order of Melfi, and through the Archpriests of both Iuvenacium and Terlizzi, the care of souls is exercised in each of the Cathedrals, where there is a baptismal font, etc., and among the sacred relics of Melfi, the body of St. Conrad, the patron saint of that city, is preserved with great veneration. In addition to the Cathedral, there are two parish churches with baptismal fonts in the cities of Melfi and Terlizzi, while Iuvenacium has a Collegiate Church dedicated to St. Spirit. Furthermore, each city has monasteries for men and women, one orphanage for girls, several lay sodalities, a hospital, and a pawnshop. The united dioceses extend for approximately nine miles and contain several parishes. The CATHEDRAL CHURCH of CASALE is vacant, having been transferred to the Metropolitan See of Milan, where the Reverend Aloysius Nazari of Calabria was promoted. The Reverend Peter Maria Ferre, formerly the Bishop of Pavia, has now been appointed. Casale, formerly Sedula and the capital of Montferrat in Liguria, is a city located on a flat area near the Po River, with a circumference of over two miles, containing approximately three thousand houses, and inhabited by approximately two thousand citizens. The Cathedral Church, dedicated to St. Eusebius, is a suffragan of the Archbishop of Vercelli. Its Chapter includes two dignities, the first of which is the Praepositura, and includes fourteen Canons, including a Penitentiary and a Theologian, five Mansionaries, and others.

[*Latin ed. p. 601*]

PROMOTIONS: Priests and clerics diligently serving the divine. The Chapter holds the habitual care of souls, which is exercised in the Cathedral by a parish priest chosen by the Chapter and approved by the Bishop, in which is found the baptismal font, etc., and among the sacred relics, especially the body of St. Evasius, the most religious patron of the diocese, is preserved; the cemetery, however, is located outside the city. Four other parishes are mentioned, each with a church equipped with a font, several for men and one for women, a monastery, several confraternities, a hospital, a charitable foundation, and a seminary. The

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extent of the diocese extends to approximately ninety miles, and includes over one hundred and thirty parishes.

THE CATHEDRAL OF IMOLA: Vacant due to the death of the esteemed and venerable Priest, Cardinal Caietani Baluffi, Bishop of this Church, to which the Reverend Vincent Moretti, formerly Bishop of Cesena, has been transferred. Imola, a beautiful and elegant city of Emilia, located in Romagna on the Vatrenus River, built on a plain, has a circumference of three miles, contains two thousand five hundred houses, and is inhabited by more than ten thousand citizens. The Cathedral of Bologna is a suffragan of the Archbishop. Its Chapter includes nine dignities, the first of which is the Prebend, nine Canons, six Beneficiaries-Mansionaries, two Supernumeraries added by the generosity of the Most Holy Lord, and other priests and clerics serving the divine. Through one of the Canons, the care of souls is exercised in the Cathedral, in which is found the font, etc., and among the sacred relics, the bodies of St. Cassian the Martyr, and St. Peter Chrysologus, Bishop and Doctor of the Church, are most religiously preserved; the cemetery is located outside the city. Nine parishes are mentioned, of which two have churches equipped with a baptismal font: three monasteries for men and two for women, a double conservatory, several confraternities, a new institution for girls founded by the generosity of the reigning Pope, formerly the Bishop of Imola; a hospital, a charitable foundation, and a seminary. The extent of the diocese extends to approximately fifty miles, and includes many other places.

THE CATHEDRAL CHURCHES OF PISTOIA AND PRATO: Both are perpetually vacant due to the death of the Bishop, Leo Nicholas, to which the Reverend Henry Bindi, a priest of the Pistoia diocese, has been promoted, a Canon of the same Cathedral, distinguished by his excellent merits. Pistoia and Prato are cities of Etruria, located on the plain, the first built near the river Stellam, within its circumference of almost three miles, it contains approximately three thousand houses, and is inhabited by twelve thousand citizens; the second, located near the Bisentium river, contains one thousand five hundred houses, and is inhabited by more than ten thousand citizens. The Cathedral Church of Pistoia is dedicated to St. Zenon, Bishop and Martyr; that of Prato to St. Stephen, the Protomartyr, and both are suffragan to the Archbishop of Florence. The Pistoia Chapter includes eleven dignities, the first of which, after the pontifical, is the Prebend, and fifteen Canons, including the Penitentiary; the Prato Chapter includes five dignities, the highest of which is the Primiceriate, and nineteen Canons, including the Theologian and the Penitentiary; both have several chaplains, and other priests and clerics serving the divine. Through one of the Canons, approved by the Bishop, to whom a removable priest provides assistance

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at his discretion, the care of souls is exercised in each Cathedral.

[*Latin ed. p. 602*]

^602 PROMOTIONE S and a baptismal font are present there, and among the Relics of the Saints, specifically the arm of St. Zenon and the body of St. Actius, the Bishop of that city, are religiously preserved. Ten other parish churches are listed in Pistoria, and one of them, dedicated to St. Andrew the Apostle, is equipped with a baptismal font, and there are seven meadows without a baptismal font. In addition, there are several monasteries for men and women, as well as a few lay sodalities, a hospice, a pawnshop, and a seminary. The diocese extends approximately eighty miles and includes many other locations. THE CATHEDRAL CHURCH OF FULGINIUM is vacant due to the death of the Most Reverend Nicholas Belletti, the last Bishop, and the Reverend Father Nicholas Grispigni, formerly the Bishop of Mandelensis, has been appointed to it. Fulginium, or Fulginium, is an ancient and cultivated city of Umbria, built at the foot of the Apennines and on the banks of the Tinia River, with a circumference of almost two miles, containing one thousand eight hundred houses, and inhabited by nearly ten thousand citizens. The Cathedral Church, dedicated to St. Felician, Bishop and Martyr, and patron of the city, is immediately subject to the Apostolic See. Its Chapter includes four dignitaries, the first of which is the Priorate; twelve canons, with both benefices to be conferred, eight honorary canons, ten beneficed mansionaries, and other priests and clerics who devote themselves to divine works. The Chapter has the care of souls, which is exercised in the Cathedral by the Prior himself, and by three Vice-Rectors elected by the same Chapter and approved by the Bishop; there is a baptismal font there, the only one in the city, and among the sacred relics, the body of St. Messalina, the Martyr and patron of the city, is religiously preserved. SIX other parish churches are listed in Fulginium, two of which are also collegiate churches; there are six monasteries for men and as many for women, some lay sodalities, three orphanages, a hospital, a pawnshop, and a seminary. The territory of the diocese extends approximately thirty miles and includes many other locations. THE CATHEDRAL CHURCHES OF MACERATA AND TOLENTINO are perpetually canonically united, being vacant due to the death of the Most Reverend Bishop Amadeus Zangari, and the Reverend Caietan Franceschini, a priest from Fulginium, has been appointed to them. He had been co-opted among the students of the Seminary, which was established by the generosity of the Most Holy Pope in Rome and is called PIUS, and he had been awarded a doctorate in both laws, and he has admirably demonstrated his suitability for ecclesiastical functions; he served as the Canon Rector of the Fulginium Seminary, and then as Vicar General and later as Capitular. Macerata and Tolentino are cities located on the Chientum River, the former being

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large and situated on a hill, with a circumference of one and a half miles, containing two thousand five hundred houses, and inhabited by eighteen thousand citizens; the latter, however, is quite cultivated and built in a flat area, and within its circumference of almost two miles, it includes one thousand houses and six thousand citizens. The Cathedral of Macerata is dedicated to the Assumption of the Blessed Virgin Mary and to St. Julian, the patron of the city; the Cathedral of Tolentino is dedicated to St. Caterva, the Martyr, and also the patron of that city, and they are suffragan to the Archbishop of Firmo. The Chapter of Macerata includes one Archdeacon, sixteen canons, four major mansionaries, six beneficed priests, and two clerical benefices; the Chapter of Tolentino includes two dignitaries, the first of which, after the pontifical, is the Arch-

[*Latin ed. p. 603*]

PROMOTIONS: "The diaconate consists of fourteen Canons, and four Mansionaries; both are readily available to provide theological and penitential assistance, as are other priests and clerics dedicated to the work of God. Within each chapter, the care of souls is entrusted: in Macerata, by one Canon assisted by two priests; and in Tolentino, by a perpetual Vicar and two parish priests; both also have a baptismal font in their churches, and among the sacred relics, Macerata preserves the arm of Saint Julian, and Tolentino the bodies of Saints Carviero, Septimius, and Bassus, all properly preserved. Outside each town is a cemetery. In addition to the cathedral, there are five parish churches in Macerata, and in its suburbs, all equipped with baptismal fonts. One of these, dedicated to the Most Holy Savior, is also a collegiate church with the dignity of a prebendary and twelve canons: six men and six women. Tolentino has only one parish church, dedicated to Saint Francis, without a baptismal font, which is also a collegiate church with the dignity of a prior and twelve canons, as well as two monasteries for pious women and three for men, the first of which is the renowned monastery of the Eremites of Saint Augustine, which houses the sanctuary of Saint Nicholas of Tolentino. In both towns, there are two orphanages for each sex, several lay sodalities, a hospital, a pawnshop, and a seminary. The dioceses extend to approximately eighteen thousand inhabitants and contain three locations.

THE CATHEDRAL OF ALBA: Vacant due to the death of the Most Reverend Bishop Constantinus Michaelis Fea, the position has been filled by the Reverend Robert Galletti, a priest from Turin, who holds a doctoral degree in theology and has dedicated himself to ecclesiastical functions, specifically to administering the sacraments and preaching the Holy Word. He was appointed a Canon and later joined the congregation of priests and theologians at the church of the Most Holy Body of Christ; he also resigned from his position as assistant rector of the pious work known as the "Little House, effected by Divine Providence," and from his position

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as rector of the Ecclesiastical College, which is dedicated to the study of practical moral theology and sacred eloquence. Alba Pompeia, a city in Liguria, located in a pleasant and flat area near the Tanaro River, has a circumference of three miles, contains more than two thousand houses, and is inhabited by approximately one thousand citizens. The cathedral church is dedicated to Saint Lawrence, the deacon and martyr, and serves as a suffragan to the Archbishop of Turin. Its chapter consists of five dignitaries, the first of which is the Archdeacon, followed by thirteen canons, including a theologian and a penitentiary, as well as some beneficed individuals and other priests and clerics dedicated to the work of God. The care of souls in the cathedral is entrusted to the Archpriest, who is the second dignitary, assisted by two vice-parish priests. The cathedral has a font, and among the sacred relics, the bodies of Saints Frontinian and his companions, martyrs, are religiously preserved; a cemetery is located outside the city. There are two other parish churches in Alba, both equipped with baptismal fonts, as well as one monastery for women, several lay sodalities, a hospital, a pawnshop, and a seminary. The dioceses extend quite widely, and contain ninety-five parishes.

THE CATHEDRAL OF SALUZZO: Vacant due to the death of the Most Reverend Bishop Ioannes Antonius Giannotti, the position has been filled by the Reverend Lawrence Gastaldi, a priest from Turin, who holds a doctorate in sacred theology, and who has dedicated himself specifically to administering the sacraments, preaching the Holy Word, and spiritual matters.

[*Latin ed. p. 604*]

604 CONSISTORIAL PROMOTIONS. He devoted himself to teaching. He was appointed to the faculty of theology at the University of Turin and, after obtaining a canonry in the Collegiate Church of the Most Holy Trinity, he later relinquished it. For many years, he served as a missionary in England. Saluzzo, a city located at the foot of the Maritime Alps, partially built on a hill and partially in the plain, extends for almost four miles in circumference, contains nearly three thousand houses, and is inhabited by approximately fifteen thousand people. The cathedral church, of Gothic structure, is dedicated to the Assumption of the Blessed Virgin Mary and to the martyr St. Goffredo, and serves as a suffragan to the Archbishop of Turin. Its chapter includes three dignitaries, the first being the Archdeacon, followed by thirteen canons (including a theologian and a penitentiary), as well as other priests and clerics serving in the ministry. The care of souls in the cathedral is exercised by the Archpriest, who holds the third position in the chapter, and in which is found a font, etc., and among the sacred relics, the head of St. Goffredo, the patron saint of the city, is religiously preserved. There is a cemetery outside the city. Furthermore, there is another parish church in the city of Saluzzo, equipped with a baptismal font; there are

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two monasteries for men, an orphanage, a home for the elderly, four lay sodalities, a hospital, a pawnbroker's, and two seminaries. The territory of the diocese extends quite widely and includes many parishes.

THE CATHEDRAL CHURCH OF ASTI. This position became vacant due to the death of the Most Reverend Bishop Philip Artico, and the Reverend Charles Savio, a priest of the Archdiocese of Turin, Doctor of Sacred Theology, was appointed to it. He devoted himself to hearing confessions and preaching the word of God; he was appointed to the faculty of theology at the University of Turin, where he was chosen as a professor of theology and ecclesiastical history in the archdiocesan seminary. He was also a canon in the Collegiate Church of the Most Holy Trinity and served as an assistant in the administration of the parish of the Church of the Most Holy Body of Christ, and he resigned from his position as an examiner for the synod and as a reviser for the printing of books. Asti, also known as Pompeia, is a city in Piedmont, built on the plain near the Tanaro River, and extends for almost four miles in circumference, containing approximately five thousand houses, and is inhabited by about twenty-four thousand people. The cathedral church, dedicated to the Assumption of the Blessed Virgin Mary, serves as a suffragan to the Archbishop of Turin. Its chapter includes four dignitaries, the first being the Praepositus, followed by seventeen canons (including those who are to provide the canonical duties), ten beneficed priests, and other priests and clerics serving in the ministry. The care of souls is vested in the chapter, and it is exercised in the cathedral by one of the beneficed priests, known as the perpetual Vicarius, elected by the chapter and approved by the Bishop, and in which is found a font, etc. There are seven other parish churches in Asti, equipped with baptismal fonts, and one of these is also a collegiate church; there are two monasteries for men and one for women, three homes for the elderly, several lay sodalities, a hospital, a pawnbroker's, and a seminary. The territory of the diocese extends quite widely and includes one hundred and twenty locations.

THE CATHEDRAL CHURCHES OF POTENZA AND MARSICENA. These positions became vacant due to the death of the Most Reverend Bishop Michael Angelo Pieramico, and the Reverend Father Anthony Fania, a priest of the Order of Friars Minor of the Observance of St. Francis, professed, of Arignau, was appointed to them.

[*Latin ed. p. 605*]

He diligently discharged the duties of a Pontifical Chamberlain, having been a lecturer in philosophy and theology within his Order, and having served as Minister of his province, and having fulfilled the functions of Procurator and Delegate General for the Order; he was numbered among the Consultors of the Supreme Congregation of the Inquisition, and among the Index, and among the Examiners, whether for approbation by Bish-

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ops, or for examination by provincial councils; he had also been chosen as a Counselor in defining the dogma of the Immaculate Conception of the Blessed Virgin. The cities of Potenza and Marsico in Lucania, within the region of Basilicata, are such that the former, within a circumference of nearly three Roman miles, contains almost two thousand houses, and nearly twelve thousand inhabitants; the latter, within its double Roman mile circumference, comprises one thousand eight hundred houses and more than eight thousand citizens. The Cathedral Church of Potenza is dedicated to Saint Gerard, Bishop, and patron of the city, and was recently destroyed by an earthquake, but is now being rebuilt, and its construction is being completed, and he ministers to the Archbishop of Acerenza and Matera. The church of Marsico Nuovo is dedicated to the Assumption of the Blessed Virgin Mary, and ministers to the Archbishop of Salerno. Both cathedrals count three dignities, the first being the Archdeaconate; Potenza has fifteen Canons with their prebends, and twelve Mansionaries; and Marsico has twelve Canons with some Benefices, or Mansionaries; in both places, there are also several other priests and clerics who minister in the divine services. By a second dignity, which is the Archpresbyterate, Potenza has one Mansionary who assists; and by the Primicerius, assisted by the Oeconomus, the care of souls is exercised in the Cathedral of Marsico; in both places, there is a baptismal font, etc., and among the relics of the saints, the arm of Saint Gerard is especially preserved in Potenza, and the body of Saint Augustine in Marsico, and these are kept with due reverence; outside the cities, there is a cemetery. In addition to the cathedrals, Potenza has two other parish churches, which are also collegiate; Marsico has four parochial churches, all of which are equipped with baptismal fonts; there is also a monastery for men in each city, and in both places, there are several lay sodalities, a hospital, and a seminary; a house of piety is desired. The dioceses united to the five mentioned extend to more than ninety Roman miles and contain many other places. (The text continues.)

[*Latin ed. p. 606*]

606 APPENDIX XVII. CONCERNING THE PROPER FACULTY OF CLERICS TO INVEST FUNDS AND THE FRUITFULNESS OF SUCH INVESTMENTS THROUGH PIOUS CONTRACTS, WHICH ARE CALLED "CREDITS" (1). It is repeatedly asked whether, when a cleric lends money to another, he, as the creditor, is permitted to demand interest. For he who lends money to others through a contract of credit, doubts whether he can demand the return of his money, and whether, in the event of damage, he can recover his property. It is also doubted whether a cleric, having a sum of money, can lawfully invest it in a "credit," or whether he can deposit it with someone who can safely manage it, or invest it in public bonds, as we explained above on page 561. We will now address this matter

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further. The question is: 1. Whether such a contract is lawful in itself; 2. Whether it is lawful for a cleric to engage in such transactions, given that he should abstain from worldly pursuits; 3. Whether a "credit," as a form of investment, can be considered a canonical practice. A third reason for doubt concerns the interest rates, which do not derive from the contract of loan itself, but from external factors, and whether these can be lawfully applied to "credits" with pious institutions. The common doctrine affirms this.

Regarding the first doubt, it can indeed be affirmed that a "credit" with the required "Castrensis" conditions, as established by the Civil Codes of the Holy See, is not inherently unlawful. This can be seen in the Motu Proprio of Pius VII, published on November 22, 1817, article 1742; in the Motu Proprio of Leo XIII, Paulo de Castro, article 1061; and in the Motu Proprio of Gregory XVI, published on November 10, 1834, § 1619, in which it is expressly stated that the "Castrensis" requirements are: "Castrensis requirements" (the very words).

(1) This question is addressed by Adv. Alexander Raphael Farricelli in his work, "Raccolta di opuscoli di giurisprudenza canonica," published in Rome by the Salviucci Printing House in 1867.

[*Latin ed. p. 607*]

K xvii. (Having rendered it in Latin, we recite it.) "It is possible, I. that debtors may be absolved from interest; but the law stipulates that the ecclesiastical authority shall determine the amount of the debt, and that the creditor shall be entitled to compensation for the loss suffered, from the day on which the payment should have ceased; these are matters to be considered, namely: 1. that interest may be increased; 2. that the damage arising from the debtor's delay shall be compensated to the cleric; For if the creditor is unable to obtain profit from the principal sum due to the debtor's delay, and a loss arises from the transaction, as is stated in synodal decrees, book 10, chapter 6, number 3, concerning the creditor who delays the payment of a certain sum of money; the same can be affirmed concerning him who lends money to another for the purpose of business. Sacred canons and ecclesiastical laws protect individuals from illicit and dishonest dealings in transactions in which, without any legitimate reason or obligation, the creditor, by reason of his position in Castrum, places his assets in a safe place, and it is to be determined whether the required interest can be legally charged on such a transaction made by ecclesiastical persons, for whom the performance of the transaction was a stimulus to themselves: It is taught by the Holy See to others that pecuniary matters are subject to the doctrine in Ravenna, on February 17, 1851, § 9, before Bonini, concerning the matter of interest, etc. And again, the same is taught in the laudable decision before the same Bonini on June 4, 1855, § 5, where it is written: "And lighter was the objection than the other objection raised, that

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the creditor, as a cleric, should not have granted credit to the debtor, and charged him interest, which, by the sanction of canon law, was forbidden to those of ecclesiastical dignity." It was first and foremost invoked in vain by the defendants that the term "interest" should not be applied to such contracts, which are subject to the censure of canon law, concerning illicit transactions, and that the clerics, by protecting debtors from such questions, do not provide assistance to debtors, but only to those who are in debt, and exempt them from the payment of interest. Indeed, apart from the fact that the purpose of the censure of canon law is not to protect clerics from illicit transactions, but to assist debtors in paying their debts, it is clear that the clerics, by protecting debtors from the payment of interest, do not provide assistance to debtors, but only to those who are in debt, and exempt them from the payment of interest.

[*Latin ed. p. 608*]

608 APPENDIX XVII. Those who engage in lawful business dealings are to be subjected to appropriate penalties; or some provision is to be made for the satisfaction of debts owed, as taught by Most Holy Father Benedict XIV in the Synod, Decree I, chapter 6, paragraph 3, and by Cardinal De Luca, etc. But the matter is clarified by the fact that sums of money which belong to the substance of the ecclesiastical patrimony are to be invested in stable and productive lands, and if they are not found, they are to be applied to the payment of debts. This is derived from the practice of the Holy Congregation of Bishops and Regulars, which demonstrates this, as is shown by the esteemed Aloysius Trombetta in his highly praised work, entitled "Rules of Practice Concerning Contracts, etc.," chapter 7; where he states that a proper investment must be made in stable and productive lands, secondarily, and as a subsidiary, it can be made in debts. But it often happens nowadays that those who are required to invest are not required to pay any sum, but instead are allowed to constitute a productive credit: and this is not without reason; for for many reasons, such an investment is considered more advantageous than one consisting of debts; whereas, according to the aforementioned canon, if the matter concerns only pious institutions, it must be requested of the Holy Congregation of Bishops and Regulars that they grant the faculties necessary to make such an investment. The practice is that the Holy Congregation, when granting the faculty, does not directly approve it; but rather, it usually writes to authorize the placement of funds in a safe and lawful investment.

[*Latin ed. p. 609*]

FROM THE HOLY CONGREGATION OF THE COUNCIL. A DECREE ISSUED BY THE HOLY CONGREGATION OF THE COUNCIL, CONCERNING THE INTERPRETATION AND DEFENSE OF THE DECREES OF THE COUNCIL OF TRENT, AT THE MANDATE OF THE MOST

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HOLY.

Before presenting the aforementioned Decree, it will not be inappropriate to note certain things.

To anyone observing the general state of the Catholic Church, it is evident that many laws have been enacted by governments throughout the world, and many customs have arisen from these same laws, which are contrary to ecclesiastical order and discipline. However, it cannot be denied at this time that, with very few exceptions, both peoples and governments either venerate or hold in high esteem the voice of the Apostolic See.

Furthermore, there are numerous specific and solemn events that demonstrate how those heretics, who were once seized by fury against the Apostolic See and the Catholic Church, now not only do not resist the Catholic Church, but, if they can offer any service pleasing to the Apostolic See, they do not find it difficult to do so. And daily we see the Catholic unity growing stronger, and both pastors and flocks becoming more closely bound to the immovable See of Peter; and all eyes, not only of Catholics, but almost of all, are turned towards the Apostolic See of Peter and its glorious Successor.

However, at the present time, one government stands out as being hostile to the Catholic Religion, and indeed powerful; which, while fostering the sects of other religions within its borders, neglects and despises the Catholic Religion, with no effort spared, and disregards the Apostolic Authority.

[*Latin ed. p. 610*]

610 DECREE. He holds [the Church] in servitude, in the manner of barbarian peoples, and directs all his relatives with unjust laws, so that he may tear away faithful people from the center of Catholic unity. Indeed, he does not blush to deny to those faithful who are subject to him the ability to communicate with his Mother, so that they may receive the nourishment of milk and the food of eternal salvation: he denies them the ability to communicate with that Mother who has never inflicted harm on anyone, who prays for the prosperity of all, and who teaches faithful people to obey those who govern, even if they are wicked, and to support them in all things that do not contradict the law of God and His Church; laws which the very Government itself has repeatedly promised to observe, publicly affirming its fidelity to the Holy See, although it has never kept faith with it. In the official City Ephemeris, the Decree, issued by the Holy Congregation of Councils, which follows below, was published on May 3rd, concerning which the same Ephemeris notes the following, which we have translated from Italian into Latin. "After the infamous Decree of the Russian Government, issued on June 5th, 1866, by which the Diocese of Camene-Uzes was suppressed by arbitrary means, and its proper pastor was forcibly taken away from two hundred thousand faithful or more; after repeated Papal

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protests, made in the Consistory Address of October 29th last past, and in the Exposition, accompanied by documents, which followed that Address, the Holy See knows that those unhappy Catholics are still completely abandoned. Deeply saddened, the Most Holy Father could not allow such a state of religious affairs to continue, and he conceived a plan to temporarily entrust the same Diocese to the pastoral care of the Bishops of Luceoriensis and Zytomeriensis. However, since it is clearly known that those who communicate directly with the Supreme Head of the Catholic Church are subjected to severe penalties of imprisonment and exile, so that more victims may not be added to the already numerous ones, the Most Holy Father, feeling that any path to the exercise of his Apostolic ministry in those miserable regions is blocked, finds no other way to bring about such a temporary arrangement for that Diocese, than through the publication of this Decree in this official ephemeris, hoping that, by this Decree being again published in the public ephemerides, it will come to the knowledge of the Bishop and of..."

[*Latin ed. p. 611*]

DECREE. That the faithful may be consoled, and that this may be a comfort to that same Bishop, and to those faithful who, amidst so many difficulties, do not cease to adhere with steadfast spirit to the firm center of Catholic unity. The decree, of which we have now explained the title, is of the following tenor: "It has become known to the Apostolic See that, on the 5th of June of the year 1866, the Government of Russia, by a decree, recklessly suppressed the ancient and illustrious Diocese of Kamenets; and, by preventing the Most Reverend Antistite, the Right Reverend Anthony Fialkowski, from exercising any jurisdiction whatsoever, and by dispersing the members of the Cathedral Chapter and the Episcopal Consistory, and by abolishing the Seminary for Clergy, it deprived the Church of Kamenets of any legitimate administration." These things, which have been perpetrated against the divine authority of the Church and its sacred hierarchy, were solemnly lamented by the Most Holy Pope Pius IX in his Consistorial Address of the aforementioned 29th of October; and he wished to lament them again in the exposition published by the Secretariat of State on the 15th of November, with the hope that, for the sake of the gravity of the matter and the justice of the complaints, the aforementioned decree would finally be revoked, and that the obstacles would be removed which impede the return of the pastor to his own See, and the exercise of his authority. However, since the Supreme Pontiff has been frustrated in his just hope; and since it is known that a large number of the faithful in that diocese are in a most grievous condition, and are in great danger of eternal salvation, because their own pastor, separated from the flock, is unable to govern his sheep, or to lead them to wholesome pastures, or to defend them from the snares of their enemies; and wishing, in accordance with the duty of his

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Apostolic ministry, to provide for the needs of that Church in the best way possible, given these adverse circumstances, he has decreed that, as long as the legitimate Bishop of Kamenets is prevented from administering his diocese, the administration of that Church be entrusted to the Modern Bishop of Luck and Zytomierz. Therefore, since the aforementioned circumstances persist, by virtue of the present decree, to the Most Reverend Gaspard Boroivski, Bishop of the Dioceses of Luck and Zytomierz, as mentioned above, are granted all and every faculty necessary and appropriate for the proper governance of the aforementioned Church, subject to the duration of the Holy See's will, and as long as otherwise it cannot be arranged; by which..."

[*Latin ed. p. 612*]

612 DECREE. "He shall be able to exercise all things, and shall be valid in exercising each individual thing, which are exercised by right, privilege, and custom within his own Diocese, whether by ordinary law, or by legitimate delegation; and therefore, the Clergy and the faithful people shall recognize him as an extraordinary Rector of the Diocese, and shall faithfully and diligently receive and follow his prescriptions, mandates, and admonitions. This is done so that the spiritual safety of those same faithful, whom the Most Holy Lord embraces with immense charity, may be preserved as much as possible, and the bond of unity, by which that part of the flock of Dominic is bound to the Chair of Peter, may be preserved intact amidst difficulties. i) Given in Rome from the Sacred Congregation of the Council on the 3rd of May, 1867." PROSPER Card. CATERINI, Prefect. PETRUS, Archbishop of Sardinia, Pro-Secretary. Taking advantage of this opportunity, it will not displease our Readers if we add to this Decree, which indicates the state in which the Catholic Church is found under the Russian Empire, the Imperial Decree of the Sultan with respect to the Catholics of Syria, who live under his dominion. From the comparison instituted, it becomes apparent how much more favorable is the condition of the Church, which flourishes under the Turkish Empire, than that which groans under the Russian one.

[*Latin ed. p. 613*]

IMPERIAL DECREE OF THE FIRST CATEGORY, WRITTEN IN GREEK: "WHEREAS, HIS IMPERIAL MAJESTY, SULTAN ABD-UL-AZIZ, ON THE EIGHTH DAY OF OCTOBER, IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND SIXTY-SIX, GRANTED TO PHILIPPO HARCUS, PATRIARCH OF THE SYRIAN CATHOLICS OF ANTIOCH, THIS DOCUMENT. A literal Latin translation from the authentic Italian version. "After the death of Anthony Samhiri, Patriarch of the Syrians who inhabit Syria and other places of My Empire, protected by God, another Successor was to be appointed: therefore, the Archbishop Ignatius Philip Harcus,

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who is now presented with My present Imperial Decree, having been judged worthy and suitable for governing ecclesiastical affairs, was elected Patriarch by the prelates of this Nation, and, at the request of My Sublime Porte, they presented a petition for the exercise of his office. Concerning this matter, I have issued this My Imperial Decree to declare that the aforementioned is appointed Patriarch for said Nation, and I command that Bishops, Vicars Forane, Priests, Monks, Nuns, and all others of the Syrian Nation who reside in My Empire, must acknowledge the aforementioned as their own Patriarch, and must have recourse to him in matters pertaining to his patriarchal office, and must not transgress his legitimate decrees, but must, on the contrary, obey and be subject to him entirely; and whereas, both the Patriarch himself and the members of his Nation must perfectly exercise their own worship without any obstacle or opposition, Governors and others who perform the duties of My Government must pay attention to this matter and take care, and no one, not even the least, must cause an obstacle."

[*Latin ed. p. 614*]

614. IMPERIAL EDICT CONCERNING THE FIRST CATEGORY. Already, difficulties arise, either by those who attempt to intrude themselves into churches and monasteries belonging to them; and their ecclesiastical laws concerning marriage must be observed, and no one must violate them; and questions, whether concerning marriage, or separation, or divorce, which may arise among their people, must be reviewed and decided by their Patriarch or his Vicars, as has been the case up to now, according to their ecclesiastical laws. Furthermore, it is forbidden that any judge, or sub-judge, or other person, oppose or interfere with the sentences issued by the Patriarch against those of their people who, according to ecclesiastical laws, deserve to be condemned and excommunicated; and, as their religion requires, priests must not be permitted to give ecclesiastical burial to those who have died guilty of flagrant crimes against their religion. And judges, and sub-judges, and any other person, whether rich and powerful, must not compel priests to bury them, saying: "Give this one burial." Nor must any opposition be made to the detriment of the possessions of churches and monasteries, and no one may place them under pledge, or seize their property; and when any of their people, while living, wish to leave a testamentary bequest to their Patriarch or to their foreign Vicars, or to priests, for the needs of the churches, after their death, the legal authority must ensure that the fulfillment of said bequests is carried out by the heirs of the deceased; and if, when priests, monks, or nuns die, they leave no heir, in this case, the Patriarch shall take possession of the property, horses, and all other possessions of the deceased for the church; and no one, whether it be the Muslim treasury, or the Prefect of inheritances, or inspectors of real estate, or the Prefect of the city, or

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any other person, may oppose this; and if they have heirs, it must not be permitted that anyone, whoever they may be, interfere with their counted money or with other possessions, movable and immovable, or with any other testamentary bequest that they wish to leave to their churches, or to their Patriarch, Vicars, or Bishops, or to priests, monks, and nuns, and others, and according to their ecclesiastical laws, it must be observed that this is valid and just; and the testimony of the Syrians of their nation, according to the rules and customs of their religion, must be heard and admitted as valid in court.

[*Latin ed. p. 615*]

IMPERIAL CHARTER OF THE FIRST CATEGORY. 615 i)us of My sacred law, and no one of the powerful and wealthy shall cause trouble to the Patriarch, saying: "Send this priest to that place, assign this church to that priest"; and in the city gates and in Skalitz, no tax or duty shall be demanded for the use of their churches, and if the Patriarch, or His priests or vicars, or His people, have any legal process, their cause shall not be heard except in My principality, established by God; and if ever the capture of any priest, or monk, or nun is demanded by the Police, the capture and detention shall be ordered by the Patriarch; and in the exportation of fruits from vineyards destined for the sustenance of the Patriarch, and of wine and honey and other products, which Christians are accustomed to give under the name of alms or tithes, neither in the city gates, nor in Skalitz, shall the officials of the Prefect demand any tax or duty, or impose any other burden, nor create any difficulties; and the vineyards and gardens and lands and meadows and mills belonging to their monasteries and churches, and their foundries, constructions, and workshops, and possessions and fruit trees and forests and flocks, for the use of said churches, are declared independent and in full and free possession of the Church, so that no one, for any reason whatsoever, may interfere; nor shall any difficulty be raised against Christians paying their customary annual taxes and alms and other patriarchal dues, and in the churches and monasteries and oratories within the patriarchal jurisdiction, no one shall oppose the free exercise of worship, or say: "You must perform this or that rite in a certain way, or you must sing this or that way"; or in a similar manner, attempt to interfere; nor shall force or threats be used to establish a military lodging in the patriarchal buildings, or for the Ministers from public security or other persons; and no one shall cause trouble to Him, because he is dressed in this or that way, and because he holds the scepter of authority in his hand. And in confirmation of all these privileges, this My Imperial Charter has been issued for free exemption, and the Patriarch has been established in his full possession, and no one henceforth, for any reason whatsoever, shall be able to interfere in matters pertaining to the patriarchal office." Written on the 29th of Gemazil E v vel.., in the year of the Hegira 1283. (that is,

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October 8, 1866).

[*Latin ed. p. 616*]

616 CONCERNING THE IMPERIAL LAWS OF THE FIRST CATEGORY: From these things, the following can be gathered: I. This decree of the Sultan provides a sufficiently clear example of how civil governments can and ought to be referred to the Catholic Church, and to the Church's authority, according to the sacred canons. II. For, according to the sacred canons, among other relationships, civil authority ought to refer itself to the Catholic Church, not merely as to any harmless religious society, certainly not hindering the free exercise of religion; but as to a perfect religious society, supporting and defending its rights, laws, and authority according to its nature (1). III. A comparison is instituted between the Muslim and the Russian; The government demonstrates a difference, in that, just as the Muslim Empire maintains both relationships; so does the Russian Empire; the Empire, contrary to the sacred canons, subverts both relationships: and thus acts and governs, as if the authority of the Catholic Church were not distinct from the authority of the schismatic government. IV. As far as we know, at the present time, civil governments that are not Catholic (we do not speak of Catholic governments), except for the governments of the barbarians, relate to the Catholic Church established within their domains, as to a harmless religious society, which has the right to profess its own dogmas: in this respect, in which civil governments relate to the Church, they do not place obstacles that would hinder the free profession thereof, although they do not grant the rights that are due to a perfect religious society. Certainly, such a relationship does not fully satisfy the due rights and honor of the Catholic Church, since it is held in the same regard as any religion that is merely among men, subject to the vicissitudes of fortune; nevertheless, such a status is not to be despised in those places that are surrounded by the darkness of error: for, through the operation of divine grace, the Catholic Church can and ought to illuminate that society held in darkness, especially with the most brilliant light of Christian virtues and of holy doctrine. However, although such a status of the Church is to be commended for these reasons, it is nevertheless not the normal status of the Catholic Church; for it lacks at least the observance of another relationship, by which civil governments ought to refer themselves to the Catholic Church: for civil authority ought not only not to place obstacles to the free profession of the Catholic Church, but ought also, as is fitting, to defend the Church itself, and the Church's authority, as a perfect society, and a true religious authority, distinct and independent from the civil society and authority, and to provide assistance according to its nature, so that the Church's laws may be observed, and the acts of its authority may be carried out, as the Catholic Church itself teaches that the faithful ought to be subject to civil authorities. These things, indeed, can and ought to be

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true not only in Catholic kingdoms, but we have seen them observed even in the Muslim Empire.

[*Latin ed. p. 617*]

MARRIAGES. December 1, 1866. Session 24, chapter 1, concerning the Reform of Marriages. A Compendium of Facts: Agnes, seventeen years of age, having left the convent, returned to her paternal home in Oppido, in the archdiocese of Freiburg. There, she fell in love with Titus, a man of forty years of age, of a non-Catholic religion, who had been practicing medicine in that town for some time, supported by a municipal salary. After having exchanged promises of marriage, the ceremonies of the wedding were planned for the year 1852. However, it was necessary to obtain a dispensation from the ecclesiastical court, so that Agnes, a Catholic, could marry a non-Catholic. Such a dispensation is not granted by the Holy See and the Sacred Canons, unless the groom promises that he will raise any children born of the marriage in the Catholic religion. Since Titus refused to accept such a condition, the dispensation for the mixed marriage was denied by the court, and the parish priest of Oppido was instructed to merely passively assist in the celebration of the marriage contract. Nevertheless, after two announcements were made in the parish church, without any mention being made of the religion of the couple, as is customary in that place, the couple, with the consent of their parents, decided to enter into marriage in the neighboring town of Kadelburg. It should be known, as the Archbishop explained, that in Oppido, where both of the betrothed resided, there was only one parish priest, and he was a Catholic, who, in the year 1852, was declared, according to civil law, to be a qualified witness in marriages contracted between Catholics. In contrast, in the town of Kadelburg, there was a Catholic parish priest, and also a Protestant minister. Furthermore, in the year 1852, the residences of non-Catholics in Oppido had not yet been assigned. In short, any heretics, if there were any present in that Catholic town, were required to contract their marriage before the Catholic parish priest of Oppido. Therefore, in order for the couple to contract their marriage in the town of Kadelburg, they requested testimonial letters from their parish priest.

[*Latin ed. p. 618*]

618. MARRIAGES. Concerning previously announced intentions, and these were recorded with the following words: "Testimonial Records - Betrothal commenced between etc., with the consent of the civil judge... on two separate occasions... duly announced in the parish church, and no one opposed this marriage, so that nothing on our part prevents the marriage from being contracted in Kadelburg; I testify, and I also request the ducal parish priest to provide me with a copy of the entry from the marriage book concerning the marriage that took place. From Bonnderf, therefore,

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they departed, and they sought the town of Kaldelburg, where they had their domicile, and there they remained for a few hours, giving their marital consent before a non-Catholic minister. However, not even eight days of concord lasted between these spouses: for serious disagreements arose, and Agnes returned to her father's house after four weeks from the ill-fated marriage; and not long after, both Agnes and her father, the lay judge, approached, requesting that the marriage be declared null and void according to civil law; but Titus did not object at all, indeed he supported, and they obtained a favorable judgment, which passed into a final judgment. For this reason, the civil court declared the marriage null, which, according to civil laws, no other parish priest, although appointed in the forum of the Church for this purpose, can complete, unless an express license has been granted to him by the civil judge to perform the marriage outside the parish. But the Catholic woman, knowing well that she was not sufficiently free before God and the Church by obtaining such a declaration of nullity in the civil forum, petitioned for many years that the ecclesiastical marriage tribunal declare the marriage invalid. With these exceptions, it was ordered that 1° a notice be sent to Agnes, and that she present her claims; 2° that the parish priest of Bonnderf extract a certified copy of the record of the marriage from the marriage book; and that the woman state the reasons why she did not celebrate the marriage before her own parish priest; 3° that the Catholic parish priest of Kadelburg report whether marriages are contracted in that parish according to the first canon of the 24th session of the Council of Trent concerning marriages, and whether the presumption of law always prevails there that this was prescribed by the Council of Trent; furthermore,

[*Latin ed. p. 619*]

MARRIAGES. 619 [He] taught that [it should be determined whether] the matrimonial instruction, according to the Ritual of the Archdiocese, which is announced in the church on the first or second Sunday after Epiphany, [should be given]: for this instruction, as it is contained in the aforementioned Ritual, is conceived in these words: Every marriage must be celebrated by the Parish Priest before the spouses themselves, in the presence of two witnesses, because, otherwise, according to the prescription of the Ecumenical Council of Trent, the marriage would be null and void. 4° Finally, [it was determined that] such a decree should be presented to the Defender of the Marriage Bond, who had already taken an oath, so that he might reveal his thoughts if he considered anything else to be inquired into. These mandates were fully satisfied: Titus presented nothing, but on the contrary, protested against the action of Agnes, affirming that the action was contrary to the civil laws. The Pro-Parish Priest who was in Kadelburg in the year 1852 testified: and that [he] read aloud that instruction every year, and that the Decree of Trent was observed by Catholics. But what is more important is the

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testimony of the Parish Priest of Bonndorf, who was requested to give his account, and he responded: "1° In the parish of Bonndorf, at all times, and continuously, according to the norm of chapter 1 of the Council of Trent, session 24 on Reform, that is, before the Parish Priest himself and two witnesses, marriages are celebrated. 2° Whether and when the Council of Trent and the Decree of which we are speaking... were promulgated in our parish, it cannot be proven by documents. Therefore, the resolution of the question lies in the general rule, namely that in purely Catholic places, such as Bonndorf and its surroundings, the Decrees of the Council of Trent are considered and presumed to be published... 3° The matrimonial instruction, as it is found in the Ritual of the Archdiocese, and therefore specifically concerning marriages, that the decree must be read before the Parish Priest and two witnesses, also on the first or second Sunday after Epiphany, was carried out from the sacred platform: 4° For the non-Catholics of this place, neither before nor after the day of December 11, 1852, the parish church itself, nor the proper Pastor, belonged to them, but they were accustomed to attend the religious services of the Catholics. It is clear from the records of the civil court, concerning the marriage of Titus, which was contracted at that time, that the Evangelical inhabitants of Bonndorf, whom they call Protestants, were not incorporated into the Protestant parish, and that the marriage of Titus was performed outside the boundaries of the civil municipality of Fismes."

[*Latin ed. p. 620*]

620. MARRIAGES. Having completed the proceedings, and after the Defender of the marriage had presented observations regarding its validity, and the cause having been debated in the tribunal, a sentence declaring the marriage null was issued. The Defender of the marriage, in accordance with the Benedictine Constitution, appealed to the tribunal of second instance, namely the Bishop of Rottemburg, to whom all the proceedings were sent; and who, having carefully examined the proceedings, advised the tribunal of first instance to remit the cause to the Apostolic See, as was done. Upon the cause arriving at the Apostolic See, with all due formalities observed, and after receiving a comprehensive report from the Archbishop, and after examining the proceedings, the cause was presented under the doubt which is stated at the end. A synoptic dissertation. DEFENSE OF AGNES, OR OF THE NULLITY OF THE MARRIAGE. – In addressing the three principal points, the Defender of Agnes (1) presented his argument, demonstrating that: 1° The Decree of Trent had been promulgated in both parishes of Bonndorf and Kadelburg, and that it is still in force in both places today. This point was demonstrated both by the testimony of the Archbishop, who in his report stated: "In both the parish of Bonndorf and the parish of Kadelburg, which districts were until the year 1806 under the dominion of Austria, the decree of Chapter L of the Council of Trent, con-

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cerning the reform of marriages, had been promulgated, and was observed in both places." And also by the confession of the Defender of the Marriage of Freiburg, who in the first instance of the cause declared: "Above all, it seems to me that I, as Defender of the Marriage, should not object," citing the argument of contradiction because Chapter I of the Council of Trent "concerning the reform of marriages" had not been promulgated. For "with us, the Tridentine decree is indeed promulgated, or, as it may be understood, is in force; and if it has not been expressly promulgated, custom, usage, and practice have the force of law." And citing the well-known principle: "the publication of the aforementioned decree is presumed, where the decree itself has been observed in the parish for some time as a decree of the Council," he added the testimonies of the priests of both towns. (1) The cause of Agnes was presented by Salvator Martini, Advocate.

[*Latin ed. p. 621*]

MATRIMONIES. 621 "Not only has the form prescribed by the Council always been observed, and the Decree promulgated annually, according to the special and particular law of each place; but also, marriages begun without this form have customarily been considered by all to be invalid. The second point demonstrated was this: wherever the Decree is in force, even mixed marriages, celebrated before a non-Catholic minister, are considered invalid, except in those places where a special dispensation from the Holy Pontiffs allows otherwise. This second point was demonstrated with great erudition by the Defender of the Faith, with the authority of Cardinal Peter in the commentary, volume 4, to the Constitution *Innocentius XII*, number 19, who, among other things, states: "Indeed, in the aforementioned Decree, the heretics were especially considered; for as Cardinal Pallavicini reports in *Nelle lettere discorsive*, page 113, while the Council was discussing this Decree, some of the Fathers considered that it would follow that, if heretics were not to observe this new form, disputes regarding the legitimacy and the right to succeed would constantly arise; therefore, the condition was established that the aforementioned Decree would not have any force unless, after one month from the day of its publication in each parish, it was made known..." From this, it is clear that the Council considered and understood the heretics, as the interpreter of the Holy Congregation of the same Council declared on several occasions, especially on September 26, 1602 - there - that the heretics, where the Decree of the first chapter was published, were to observe such a form, and therefore, even their marriages, even if contracted before a heretical minister or a local magistrate, are null and void. Furthermore, with the authority of Pigliateli, who in volume 5, constitution 79, number 29, among other resolutions of the Holy See of this kind, states: "The Holy Congregation decided that the marriage was invalid; because the Decree of the Holy Council, published in the parishes within whose limits these heretical parties resided, obligated them after

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thirty days from the aforementioned publication; a judgment which the Most Holy Lord approved, because it is said that the dwelling places are located within those parishes, and the heretics are subject to the judgment of the Church." And he demonstrated that this was the constant doctrine of the Roman See, with several resolutions added, which are referred to by Roskovàny in *De Matrimoniis Mixtis*, volume 1, page 493, edition 1842, and by Richter in the work *Canones et Decreta Conc. Trid.*"

[*Latin ed. p. 622*]

622. MARRIAGES. Canon 1853, respecting session 24 concerning marriage reforms, § 8; P. Perrone, *De Matrimonio Christiano*, book 2, section 1, chapter 2, article 2, where, treating of such a question with learned precision, he concludes in article 2, § 3: "Therefore, having removed all doubt, it is declared that marriages between Catholics and non-Catholics, celebrated in places where the Council of Trent was promulgated, are not valid, unless they have been extended by an express and special indult from the Apostolic See." And this holds true whether the non-Catholics are of the Greek rite, mixed with Catholics, and having distinct churches, ministers, and worship, or whether they have coalesced into a distinct society with their own churches and ministers, or whether they live either under a Catholic prince or under a non-Catholic prince (1).

However, in addition to several resolutions in which the Sacred Congregation of the Council declared that mixed marriages, which were contracted in places subject to the law of Trent, were not valid before their own Catholic pastor, it also demonstrated that this remained the case even after the celebrated Benedictine Decree concerning marriages celebrated in the provinces of Holland: it stated at the beginning that it could not be extended to other places; and that the foundation of that decretal was to be found in a promulgation in Holland which was not entirely certain; and this was derived from the Brief of Pius VII, dated April 23, 1817, addressed to the Vicar of the Diocese of Treves, Hommer, which Roscovany cites in his work, volume 2, page 164: in which Brief, it is written as follows: "Regarding the letter-decree of Our predecessor, Pope Benedict XIV, concerning marriages begun in Holland, We deem it necessary to point out two things: first, that it was by no means extended to the dioceses of Silesia, although the Decree of the Council of Trent concerning marriages had been published in those dioceses; indeed, there was a strong doubt as to whether that publication had taken place in those dioceses, especially because the aforementioned Decree had not been extended to those dioceses by this Apostolic See; secondly, that the aforementioned Decree has never been extended to other regions or dioceses, unless the Apostolic See itself declares it by a special Decree." The Defender confirmed this from the things that were discussed before the aforementioned Decree was issued, and which are reported (1). However, this opinion is mitigated by a learned writer at

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the end of article 3 in the aforementioned work.

[*Latin ed. p. 623*]

MATRIMONIES. 623, citing the aforementioned work, Canon and Decrees: it is clear that in the records of the case, the vote of the Cardinal of Alsace, Archbishop of Mechlin, whom the Holy Congregation for the Votive Offerings had consulted, was recorded, who, in his vote, among other things, wrote: "I have great doubt whether the publication of the Council of Trent has been sufficiently carried out in Holland and the associated provinces." And after other statements, the same Cardinal continues: "I am doing something else which also consists in the fact that in the associated Belgium, the practice has been obtained that marriages of heretics are absent, and that those marriages contracted there according to the form of the Council are considered valid and binding, and that spouses converted to the faith are not usually obliged to contract marriage anew." Furthermore, the Secretary of the Holy Congregation wrote in his learned and copious notes against the arguments that were presented in favor of the publication of the Decree; he wrote, in effect: "But these are not light objections that are raised, and if they are not proven, they seem entirely, as it were, to be suppressed, and the Council of Trent does not seem to have been promulgated in Holland and other associated provinces, which at least seems to constitute a matter of great doubt." And again, § 17: "Since it is not believed that its publication was properly carried out, or that the aforementioned Decree has acquired the force of a law, especially in those regions where it has not been accepted in practice, a prompt and easy decision would be possible in favor of the validity of such marriages." And finally, in the conclusion, § 54, the same Secretary wrote: "This alone, that it is not clearly established that it was legitimately promulgated, is sufficient to safely pronounce on the validity of the aforementioned marriages, according to the reasons presented by the Doctors under number 13. Indeed, it also appears from the Resolution issued in the Orient of India concerning such marriages on March 30, 1669, and also from the previously published Rescript in the case of Poland on November 13, 1638, that the Holy Congregation held the opinion that in those regions where it is not established that the aforementioned Decree has been published in the parishes in an understandable language, or has never been accepted and put into practice, or its memory has perished, marriages contracted before non-Parochial officials are valid." Indeed, the aforementioned Cardinal, after almost completing the legal investigation, addressed the question: "Whether it is advisable definitively to declare, by authority of the Apostolic See, the marriages of the Dutch, contracted without form..."

[*Latin ed. p. 624*]

624. MARRIAGES. "The Council of Trent prescribed that marriages be

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null and void: 'if a positive answer were given,' he said, 'such a decision would be extremely detrimental to the good of religion in Holland...' And, with due deference to the supreme judgment of the Holy See in so complex a matter, I believe that, for the sake of souls and for the increase of the Catholic faith in the united provinces (in which the Council of Trent was not sufficiently promulgated), the Supreme Pontiff should relax the law promulgated by the Council of Trent, and grant a dispensation to the inhabitants of those provinces, overcoming the aforementioned impediment." And the Advocate argued that the Decree of Benedict XIV was particularly valid, declaring marriages entered into in Holland to be valid, and not extending to other places except those mentioned in that Decree. And indeed, although that Decree included Belgium, the Austrian bishops did not consider it to include Austrian Belgium; a testimony to this is their memorial presented to Pius VI, which is found in Roskovàny, loc. cit., page 59, in which, among other things, it is written: "It is certain that the Council of Trent was promulgated in Austrian Belgium, and that no Catholic there can validly contract marriage unless the law of that Council regarding the assistance of a parish priest, etc., is observed." Moreover, after that Decree, which was issued in the year 1741, the Defender of the Holy Office added a Resolution of the Sacred Congregation, in the year 1742, concerning marriages in Aosta under the same Roman Pontiff, which is also mentioned by Perrone, loc. cit., § 3, in which it was declared that no marriage was validly contracted in Ulm, in the diocese of Constance, between a Catholic man from the diocese of Aosta and a Lutheran woman before a Lutheran minister (1). Therefore, he concluded: "(i) It is expedient to briefly present the facts of this case, which have a great similarity to the case we are discussing. Marcus, a Catholic from the diocese of Aosta, requested that the marriage he contracted several years ago in the city of Ulm with Anna, a Lutheran, before a Lutheran minister, be declared null, under the scandalous condition that the children born would be educated in the religion of the mother: Marcus argued that there was no marriage 1. because of the neglected form prescribed by the Council; 2. because of the agreement (as he believed) by which the children born were to be educated in the Lutheran religion. The Sacred Congregation referred the request to the President of the Consistory of Aosta, so that he might hear the woman and indicate whether the decrees of the Council of Trent concerning the form of marriage had been promulgated in Ulm, and whether the marriage was valid."

[*Latin ed. p. 625*]

MARRIAGES. 625 The same Decree cannot be extended to other regions unless it is expressly declared by the Apostolic See itself. This was further confirmed by a Rescript from the Sacred Congregation of the Council to the Bishop of Rosenau on August 20, 1780, as reported by Roskovàny

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in his work, volume 1, page 493, with these words: "Marriages entered into by heretics among themselves before a heretical minister ought to be disregarded, so that neither their validity nor their invalidity should be disputed, and a judgment rendered; for to expect the fruits of utility, rather than the fear of offense and danger to the Catholic religion, would be detrimental." However, marriages between Catholics and heretics are tolerated and, with ecclesiastical prudence, disregarded in some places by the Apostolic See, where they cannot be prevented. Furthermore, if such marriages are entered into before a Catholic priest without any impediment, they are indeed valid; but the Church has always abhorred them, and has never approved of them, but has merely tolerated them out of pure patience, which necessity imposed in order to avoid greater evils. And more clearly, in the Decree of the Holy Inquisition of August 13, 1849, as reported by P. Perrone in the cited place, §. 4, article 3: "The Most Holy [etc.] after hearing the opinions of the General Inquisitors and with my, the undersigned, assessor, in the case in question, ordered that a response be given: Given the Council, the prescriptions are customarily observed there at times. But no answer could be given by that President on these matters: Furthermore, letters were sent to the Bishop of Constance, who, when asked about each of the matters, responded: 'Regarding the first: whether there exists in Ulm a Catholic church that is not subject to the Regular Canons of Saint Augustine, to which, (among the other churches of that city occupied by heterodox), the care of souls and parochial rights have been transferred, and whether the Decree of the Holy Council of Trent was promulgated there, and whether, in accordance with the established synodal regulations of this diocese of Constance, it is promulgated each year.' Regarding the second: 'By Catholics, some of whose families still live in Ulm to this day, the sacred Decree of the Council of Trent has been inviolably observed.' Regarding the third: 'There has always been and there is now a Catholic priest in Ulm who administers the sacraments and to whom any Catholic can conveniently have recourse.' Nothing was observed in law, although recently there was a widely debated case in the Visitation of the Most Holy [etc.] in Ypres, which provided an opportunity for the celebrated Decree of Benedict XIV. However, it was often answered that marriages of this kind are considered null and void if it cannot be proven that they were entered into in places where the Decrees of Trent have been promulgated at times, and even accepted in practice, and where a Catholic priest could conveniently have been consulted.' Regarding the proposed doubt: 'Whether it is certain that the marriage is null in this case,' the answer given was affirmative.

[*Latin ed. p. 626*]

626. MARRIAGES. If it is true that the marriage contracted in the year 1832 by N., a Catholic, with a Protestant, N., without the presence of a

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Catholic priest, was not valid, and therefore, if it has never been ratified, that the same N. can enter into another marriage with a Catholic, provided that no other impediment exists, after the proper preliminaries, etc. And again, article 2, section 3, the same Author recounts the response given to the Apostolic Vicar of Bredcn, who in December of the year 1828 had stated: "In the Catholic provinces of Belgium, abominable unions between Catholics and non-Catholics occur from time to time before the civil authorities, without the form prescribed by Trent." This, since the declaration mentioned above, of Saint Benedict XIV, concerning marriages in Holland, given on November 4, 1741, has not, as far as we believe, been extended to the Catholic provinces of Belgium, the validity of these marriages is uncertain. It often happens that people joined in this manner come to the region bordering these provinces, and live there as if they were legitimately married. Therefore, confessors are greatly distressed, not knowing how to proceed with the Catholic party, if the penitent presents himself to the tribunal of penance; for they dare not give warning of the nullity of the marriage, nor, it seems, is it advisable to do so, because of the greater evils that are more likely to follow, since such a union is considered legitimate by civil law. Therefore, the undersigned humbly request that the Most Holy Fathers deign to prescribe some method and means for safely proceeding in this case.

To which was given the response: The Holy See, where the Decree of the Council of Trent was promulgated, and since the declaration of Saint Benedict XIV was not extended, considers that marriages celebrated contrary to the form of Trent are not invalid; therefore, recourse should be made in particular cases for an appropriate remedy. However, the Defender of the Faith did not deny that there could be, and are, circumstances in which, even in places where the Decree of Trent has been promulgated, a marriage can be validly contracted without the presence of the proper parish priest; but such circumstances are limited to cases of necessity, in which neither the parish priest, nor a designated substitute, exists, or if, due to fear of a non-Catholic prince, they are hidden, and their whereabouts are unknown, or if access to them cannot be safely had, provided that, as far as possible, the form prescribed by Trent is observed, namely, that

[*Latin ed. p. 627*]

MARRIAGES. 627 You must have at least two or three witnesses, as the Holy See has declared on several occasions. Having thus thoroughly explained these matters, the Advocate proceeded to the third section of his defense, in which he applied what he had argued to the present question. He demonstrated that the esteemed Decree had never been extended to the diocese of Freiburg, although it had been strongly requested by the Archbishop of Freiburg and his suffragan bishops (1). (1) This important document, which both Advocates used in their arguments in this case, is

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quoted here as it was presented in the summary prepared by the Advocate Agnes. MOST HOLY FATHER! "It is of the greatest importance to the Bishops of the Province of Upper Rhine that, through the judgment of the Supreme See, every possible doubt be explicitly removed concerning marriages, whether purely non-Catholic or mixed, contracted only before a non-Catholic minister (and therefore not observed in the form prescribed by the Council of Trent). MOST HOLY FATHER! I humbly beseech you, with a paternal heart, to receive, along with the petition of my four comprovincial bishops and my own, the following petition (which we already submitted on January 29, 1863), namely: "That, in order to remove all doubt concerning mixed marriages contracted without observing the form prescribed by the Council of Trent; to prevent any evils or dangers that might arise if the validity of mixed or purely non-Catholic marriages were denied; to alleviate all anxieties of conscience; and especially, to prevent Catholics from being exposed to vexations and persecutions, considering the particular circumstances present in our regions, We, with the authority of the Supreme See, and with clemency for the entire flock of Christ, grant..." The Brief of Gregory XVI of May 27, 1832, together with the Instruction of Cardinal Bernetti to the Bishops of Bavaria of September 12, 1834, and the Brief of the same Supreme Pontiff Gregory XVI concerning mixed marriages of April 30, 1841: These, along with the Instruction of Cardinal Lambruschini of April 30, 1841, to the Primate and Bishops of Hungary, and the Brief of Pius VIII of March 25, 1830, together with the Instruction of Cardinal Albani of March 27, 1830, to the Archbishop of Cologne, the Bishops of Treves, Paderborn, and Munster, and also the Instruction given on May 22, 1841, to the Archbishops and Bishops of the Austrian territories within the Confederation of Germany, should not only be tacitly tolerated, but extended with a public and explicit declaration (or, if you deem it fitting, by an Apostolic Brief) to the entire ecclesiastical province of Upper Rhine, the Archbishopric of Freiburg, the Dioceses of Mainz, Fulda, Limburg, and Rottenburg. MOST HOLY FATHER! What the Apostolic See has granted to the ecclesiastical provinces of Germany, grant also to us. Grant this favor from Your heart, in obedience to canon law, with the utmost devotion; and kneeling before Your Holiness, I offer with sincere devotion the Apostolic Blessing for myself, for my four suffragan bishops, and for my beloved confreres.

[*Latin ed. p. 628*]

628. MARRIAGES. He demonstrated that the necessity of the case did not exist in those instances in which marriage is validly contracted before only two or three witnesses, without the presence of the Parish Priest, which is quite evident from the summary of the facts recounted above. Furthermore, he rejected certain difficulties raised based on a delegation, which appeared to have been granted by the Parish Priest himself, as

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evidenced by the testimonial letters cited above, in which it was stated: "The betrothal between... took place... and no one opposed this marriage; therefore, I testify that nothing on our part prevents the marriage from being celebrated in Kadelburg, and I also request the ducal Parish Priest to provide me with a copy of the entry from the marriage book regarding the aforementioned marriage." However, beyond the fact that this concerns only testimonial letters – which, according to the custom of those places, should be issued by the Catholic Parish Priest in such cases – the Defender observed that even if these letters had continued with a mention of a delegation, such a delegation could not subsist: for, as Reiffenstuel states in I. 4, in the decree, title 3, number 8, "A license to assist at a marriage must necessarily be given to one who is a Priest..."

"I pray that, with utmost confidence in your clemency for all our flocks, you may persevere until the very end. To Your Holiness, in Freiburg im Breisgau, on the Feast of Saint Peter, August 1, 1864. Your humble, faithful, and devoted servant, and son in Christ Jesus. Hermann, Archbishop of Freiburg."

DECREE. "Most Illustrious and Reverend Lord, as a brother. All those matters which you yourself have carefully explained, and which have been presented to the Apostolic See by your suffragan Bishops of Rottenburg, Fulda, and Mainz, so that what was granted by the Supreme Pontiffs Pius VIII and Gregory XVI for the dioceses in the Rhenish province, in Bavaria, and Hungary, may be extended to the entire ecclesiastical province, have been carefully examined by this Supreme Office Congregation, to whose judgment such matters are customarily entrusted. I need not say, Most Eminent Cardinals, who perform the office of general inquisitors together with me, that they are very concerned to be able to do something pleasing to your suffragan Bishops, and especially to you, who so well deserve it for the good you do for the Catholic cause; however, after weighing all the reasons from various sides, it must be concluded that it is not expedient to introduce any changes in the matter under consideration in these four dioceses, nor to apply to them what has been granted or declared for other dioceses."

"Do not hesitate to communicate this response to the three Bishops mentioned above, while in the meantime, I pray for all good and happy things for you from the Lord."

"With all due respect."

"Rome, March 17, 1865. Your most devoted brother, C. Cardinal PATRIZI."

[*Latin ed. p. 629*]

MATRIMONIES. 629 "It is because the Council of Trent, in the aforementioned passage, expressly requires that a priest be delegated; – there

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– or another priest – these words must be understood according to their common meaning, as argued in chapter c. From the letters, it is clear that this does not extend to deacons or subdeacons, or any other cleric who is not a priest; since the term 'priest,' according to its common meaning, refers only to a presbyter. Furthermore, the practice and custom of the Church are the best interpreters of the law.

The Defender refuted the second objection, which was based on the supposed authority of a non-Catholic minister, as if, even if not by law, he would at least be considered suitable by opinion and good faith: the Defender countered this difficulty by citing Reiffenstuel, in the aforementioned passage, no. 73, concerning a putative pastor; namely, that a common error does indeed supplement the defect and the jurisdiction of that of which the common error exists, but not the error of the contracting parties themselves. Moreover, the Orator added that such an error could not have been present in the fact, since it was established that the decree of the Council of Trent was accustomed to be read publicly each year in the parochial churches, and that it was taught that there was no marriage if the Tridentine form was not observed.

OBSERVATIONS OF THE DEFENDER REGARDING THE MATRIMONIAL BOND. – In order to demonstrate the validity of the marriage, the Defender spoke on five points, from which we will extract certain elements, especially those that are relevant to the question: Firstly, he argued that the publication of the Tridentine Decree in the parishes of Bonndorf and Kadelburg had not been demonstrated. For it would not be sufficient to prove that the publication had been made in the archdiocese of Freiburg, but it must be shown that it had been made specifically in the parishes in question; therefore, the opinion of the Archbishop asserting the publication was not sufficient, especially since he had stated that the regions up to the year 1806 were under the dominion of Austria; from this, it cannot be argued that the promulgation had taken place. Similarly, he objected to the Defender's assertion of a marriage at the Freiburg court, especially since he had spoken doubtfully: or that it could be presumed to be so, and that it was in force; and if it had not been expressly published, etc., and similar statements, noting that strict and concrete proofs of the promulgation of the Decree were required, and that conjectures were by no means sufficient. But, moreover, casting a shadow over the observance of the Decree (to which we return).

[*Latin ed. p. 630*]

630. MARRIAGES. (Continuing in the third section of the defense) he concluded with words that were used by some of those who upheld the validity of marriages in the famous question concerning marriages in Holland, and which are cited by Benedict XIV in *De Syn. dioec.* I. 6. c. 6. §. 7. But proceeding to the second section of the defense, he inquired: even

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if a decree had been published, would it bind the heretic Titus, and could he have validly contracted marriage with Agnes before the magistrate? He sought to demonstrate this from the opinion of those who hold that heretics can validly contract marriage before their own minister; especially from the Brief *Sem. mem.* issued by Gregory XVI to the Bishops of Bavaria on May 28, 1832: "After these things, it is scarcely necessary to add anything further concerning those other, and by far more serious, cases of marriage between Catholics and heretics, in which the non-Catholic party would have a living spouse from whom they have been separated by divorce. Venerable Brothers, you know how firm is the marital bond by divine law, which cannot be separated by human authority. Therefore, a mixed marriage in such cases would not only be illicit, but would be utterly and completely adulterous; unless, of course, those previous marriages, which the non-Catholic party claims to have dissolved by divorce, were entirely null and void due to some impediment that truly prevented them, a canonical impediment. Furthermore, in this last case, not only must all that has been said above be observed, but it must also be ensured that the new marriage is not permitted unless, after the cause of the first marriage has already been known to the non-Catholic party, it has been investigated by an ecclesiastical court according to the norms of canon law, and the same marriage has been declared null. " From this document, he inferred that marriages of heretics, even in regions subject to a Catholic Prince (such as the King of Bavaria), are considered firm and valid by the Roman Pontiff, so that, despite a civil divorce, an impediment to the bond arises, which could not exist unless the marriage were true; therefore, Titus, being a heretic, validly contracted marriage according to the law of Trent, and granted Agnes an exemption from the impediment of his previous state. Proceeding to the third section of the defense, he inquired whether the observance of a mixed marriage celebrated for more than a century before magistrates had abolished the ancient decree of the Council by custom. And above all, he presented what is read in the Brief.

[*Latin ed. p. 631*]

MARRIAGES. 631 Pius VII, to the Archbishop of Mainz, dated October 8, 1803, in which it is proposed: "That marriages entered into by heretics before a non-Catholic minister are generally null, and that, furthermore, the second marriages of such persons are valid, provided they are contracted before a Catholic priest; but this is neither true nor sufficiently safe, and therefore should not be followed in practice in any case indiscriminately." The Brotherhood knows well that marriages of this kind are valid and firm in those places where the Decree of the Council of Trent was either never publicly promulgated, or was never observed as a decree of the same Council, or, if it was observed at one time, has since fallen into disuse through a long interval of time. Therefore, in order to prove that the

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Decree has fallen into disuse in those places, it was demonstrated that, for at least an entire century, mixed marriages had been regularly celebrated in the Grand Duchy of Baden before ministers, and that a universal opinion prevailed regarding the validity of these marriages; only controversies arose concerning the education of the children. To demonstrate this, the speaker presented numerous historical, civil, and ecclesiastical documents concerning mixed marriages celebrated in the same Duchy, which are also explained by Roskovány in the aforementioned work. And indeed, this author, in volume 1, page 100, states that in the Margraviate of Baden, a law was established by the government on April 25, 1750, prohibiting the celebration of mixed marriages without a special dispensation from the government; (from which the speaker argued that such marriages had previously been freely celebrated), and that this law remained in force until the year 1803, when, by an edict dated February U, such a law was repealed and the freedom to enter into mixed marriages was again granted. In this edict, according to what the same author reports, the following was prescribed before the marriage: "It is permissible for the parties to enter into an agreement regarding the religion in which they wish to raise their children; but these agreements cannot be changed or new ones made during the marriage; in the absence of such agreements, all children must be raised in the religious faith of the father; the choice of which priest shall perform the marriage is left to the discretion of the parties, but the party whose priest does not perform the marriage must provide written evidence of the established regulations; moreover, if either party wishes to be married by their own priest, nothing prevents this from happening."

[*Latin ed. p. 632*]

C32. OF MARRIAGES. To this, an edict of the Government was added on May 11, 1807, concerning the religious education of children born of mixed marriages, as the same Author states in volume 2, page 112. According to this, the religious education of the children was to be generally guided by the religion of the father; if, however, legitimate agreements existed between the parents, made before the marriage, the children were to be educated according to those agreements; these agreements could not be altered during the marriage; finally, it would indeed be proper to divide the education according to the sex of the parents, but it was permissible to determine that all the children should be educated in the religion of the mother, only in those places where the religion professed by the mother could be practiced freely and with full rights. However, the Archbishop of Freiburg (the Orator continued) observed that, from these two edicts of 1803 and 1807, marriages were being contracted before civil officials without any intervention of Catholic priests. Therefore, he proposed an ecclesiastical edict on March 5, 1830, as the same Author states in volume 2, page 135, in which he urged that, while a non-Catholic official was performing the marriage

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ceremony for a mixed marriage, the Catholic priest should endeavor to ensure that the Catholic party did not forgo receiving the blessing according to the Catholic rite from his own priest, lest the grace of the sacrament be lost; likewise, if the wife were Catholic, Catholic priests should strive to persuade the husband to promise to provide for the Catholic education of all the children; on the contrary, if the husband were Catholic, they should diligently ensure that he did not, through agreements, circumvent the provisions of the law favorable to Catholic education in such cases. From these things, the Defender inferred that the Ordinary of Freiburg intended that mixed marriages celebrated before civil officials should at least be considered valid, although illicit. Then, the Orator recalled the Brief of Pius VIII, sent to the Bishops of the Rhine, that is, to the Archbishop of Cologne and to the Bishops of Treves, Paderborn, and Muenster, dated March 25, 1830, in which, after condemning mixed marriages according to the prescriptions of canon law and with the prescribed precautions, he decreed regarding their validity: "We will and command that mixed marriages, which may occur in your dioceses after this date, if they are not hindered by any other canonical impediment, be considered valid and true marriages, provided that the prescribed form from the Council of Trent is observed."

[*Latin ed. p. 633*]

MATRIMONIES. 633 As We, by Our Apostolic authority, declare and decree that these marriages are true and valid. Therefore, Catholic individuals... must be instructed by the sacred pastors, so that they may understand that they have entered into a true and valid marriage. To this, the following instruction is appropriate, which the same Pontiff ordered to be sent to the same Bishops, whereby, among other things, marriages previously contracted were validated. After this, the Orator recounts what is often praised, as mentioned by Reskovàny, volume 1, page 334, namely that the Archbishop of Freiburg, shortly after the Brief, imitated the example of other Bishops, and declared that he would adhere to the laws of the Government, but in accordance with the norms previously defined by the Brief of Pius VIII, sent to the aforementioned Bishops; and that a response was given by the Government, stating that indeed no difficulties would be placed in the way of the Archbishop in practice, but that they would nevertheless provide protection to the clergy, provided that they also scrupulously observed the civil laws; and in order that no opportunity be given for such protection, the Ordinariate of Freiburg was frequently urged to exhort the sacred canons to observe the Church's safeguards. From these things, the Orator inferred that mixed marriages were most often celebrated before civil officials. He also presented a document, as mentioned by the same author, volume 2, page 257, in which, in the year 1840, the clergy of Freiburg requested that the Archbishop hold a diocesan synod, so that remedies

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might be provided for the evils by which the Church was afflicted under the domination of the Princes and the servitude, especially on account of "those unfortunate mixed marriages," concerning which the matter is still under dispute, and from which arises a great impediment to the education of the offspring in the Catholic faith; for which reason, "no less discord is heard between Catholic Bishops and Protestant Princes, than between the two religions themselves; and while they are thinking and dealing with these matters, the greatest diversity often prevails among the souls, which We cannot ignore, and the laws, on the contrary, often threaten to be removed and to draw minds to different sides." To this, the Archbishop of Freiburg responded on February 21, 1840, after hearing his senate, that these questions were not Badenian, but...

[*Latin ed. p. 634*]

€34. MARRIAGES. "These [laws] are to be enacted, and therefore not by any diocesan, nor even provincial, but only by a national synod. Furthermore, Pope Gregory XVI issued a Brief on May 27, 1846, addressed to the Archbishop of Freiburg, in which the Archbishop expresses his sorrow over the frequent occurrence of marriages between Catholics and non-Catholics in those regions, and over the manner in which civil authorities conduct such marriages (1). (1) The complete document is as follows, with the wording as alleged in the summary of the defense against the nullity of the marriage. GREGORY PP. XVI. "Venerable Brother, Greetings and Apostolic Benediction. "We have learned, with great sorrow, from Your letter of March 7th of the past month, that you are deeply concerned about the frequent occurrence of marriages between Catholics and non-Catholics in those regions, and about the manner in which civil authorities conduct such marriages. It has been explored and confirmed that Catholics, whether men or women, who rashly enter into mixed marriages expose themselves and their offspring to the danger of perversion, thereby sinning against the natural law. The Church, and this Apostolic See, strive to uphold this law, whether through the general prohibition of such marriages, or through the precautions that it requires by law, since, for serious reasons, it allows such unions only with great caution, so that not only may the Catholic spouse not be corrupted by the non-Catholic, but rather that he may be encouraged to do his best to lead the other back from error, and also so that the children of both sexes born from these marriages must be raised entirely in the sanctity of the Catholic Religion. Therefore, Venerable Brother, we highly commend you in the Lord for the merits of your episcopal ministry, and for having, with due consideration, turned your attention to this matter of great importance, and for striving to defend the Church's doctrine on mixed marriages and its freedom, and for having, with pastoral strength and constancy, removed abuses from among your flock, and for having repeatedly instructed and

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ordered your parishes to religiously observe the rules of the Church in such marriages, as diligently instilled by Us and Our predecessors. Indeed, with regard to the blessing, as you well know, this Apostolic See has been accustomed to prohibit it even in those marriages that take place between Catholics and non-Catholics, with the permission of the same See, and with the precautions prescribed therein. And although it may be tolerated, as has been the custom in some regions, to bless marriages between Catholics and non-Catholics with the permission of the Church and with the aforementioned precautions, such a blessing is never tolerated in those cases in which the same grave and manifest crime is committed in the very marriage contract, without the permission of the Church, or without the necessary prior precautions. For it must never be tolerated that sacrilegious rites be added to these contracts, and that priests of God should, by their actions, seem to approve what they teach and preach to be illicit. And our adversaries certainly feel this, who would not be so concerned about the blessing of a Catholic priest in such marriages, unless they understood that it would tend to weaken, and indeed to gradually erase, the memory of this in the minds of the Catholic people."

[*Latin ed. p. 635*]

MARRIAGES. 635 These matters, briefly summarized by the Orator, divided into four distinct periods, concluded that mixed marriages, always contracted within the Grand Duchy of Baden, had been performed without the form of the Council of Trent and before civil officials, and had always been considered valid. Therefore, he argued that even if it were certain that the Decree of Trent had been promulgated, it had nevertheless fallen into disuse after a long interval. Those who detest such marriages, and with the most steadfast zeal, the Holy Mother Church is accustomed to turn her children away from them, to the detriment of themselves and their future offspring. Our opponents, of course, know that if things were to proceed according to their wishes, it would easily follow that Catholic women, in particular, would consider such marriages either permissible or not gravely illicit, especially if they appeared to be sanctioned by sacred Church rites and priestly benediction. These things are in accordance with the instructions and warnings that have been recorded, either in Our own writings, or in the letters or instructions of Our Predecessor, Pope Pius VIII, addressed to various Archbishops and Bishops, or issued at Our command, as Your Eminence knows. Moreover, it does not matter if these instructions were given only to certain prelates who had consulted this Apostolic See, as if others were free to disregard their judgment. For here we are not dealing with any new law introduced by Our Predecessor or by Us, but rather with an effort to, as far as possible, mitigate the severity of discipline, while at the same time instilling those things that we have judged necessary for correcting bad practices, for safeguarding the deposit of sound

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doctrine, and for preserving the sanctity of marriage, the integrity of the Catholic Religion, and the salvation of souls. Therefore, even if the letters and instructions, in some respects, grant or tolerate something new, they refer only to those places for which they were given, and their meaning is not limited in any way, insofar as they announce the unchanging doctrine of the Church, inculcate the judgment of the canons, and condemn the corrupt practices that were flourishing in some places. And to this end, we have indicated several things on this matter in numerous addresses to Your Eminences, our Holy Roman Church Cardinals, in Consistory on December 4th, 1837, on September 12th, 1838, and on July 10th, 1839, which we immediately ordered to be printed and published. We felt it necessary to remind you of these things in writing, Your Eminence, so that you may continue to fulfill all the duties of a good pastor with ever greater zeal and firmness, and that you may defend the cause of the Church in this matter of great importance, sparing nothing that you know to be relevant to the salvation of your flock. We, for our part, will not fail, as far as is pleasing to the Lord, to use every effort to bring these sacred matters to a better condition, with God's help. In the meantime, while we heartily commend your pastoral solicitude, we impart to you, Your Eminence, and to all the clergy and laity of that Church, from the depths of our heart, the Apostolic Benediction. "Given at Rome, near Saint Peter, on this 23rd day of May, 1846."

[*Latin ed. p. 636*]

636. MARRIAGES. Indeed, from the very manner in which the Parish Priest proceeded in the present matter, he affirmed that such marriages should be considered valid. For the Parish Priest of Bonndorf could not have refused to bless the spouses before the minister, even if there were only a suspicion of nullity, if he had retained the faith of the validity of the marriage and had recorded it in the marriage book. Having noted these and other points, he proceeded to the fourth section of his defense, demonstrating that, in cases of doubt concerning the validity of a marriage, a judgment should be rendered in favor of its validity; for it is a bond instituted by divine law, which cannot be dissolved by human authority. Furthermore, he concluded that, if there were no certainty concerning the validity of the marriage in the present matter, all of these considerations would nevertheless raise a serious doubt about its validity. Finally, in the fifth section of his defense, he sought to refute the arguments presented by the opposing speaker to demonstrate nullity, and specifically stated that the observance of the Decree in the parish of Bonndorf, even if it was in force in marriages celebrated between Catholics, should nevertheless be excluded in marriages between non-Catholics, or in mixed marriages, which, he again demonstrated, was evident from the very manner in which the Parish Priest of Bonndorf acted, and that this method of proceeding indicated a com-

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pletely different custom in mixed marriages. Moreover, he stated that this method, maintained by the Parish Priest, was not new, but derived its origin from various civil laws and episcopal instructions. He also refuted the principle that the opposing speaker presented in the second place, namely: that wherever the Decree is in force, mixed marriages celebrated before a non-Catholic minister are tainted with nullity, except for those places to which the Benedictine Declaration, extended by special permission of the Most Holy Pope, applies; to this, he opposed the allegation of the Brief of Pope Pius VII to the Archbishop of Moguntinum, in which it is stated that valid marriages are declared if the Decree has fallen into desuetude. He stated that if the Archbishop and other Bishops of Baden had urgently requested on August 1, 1864, that the Benedictine Declaration be applied in their territories, it was not out of necessity, but out of utility, in order that "every and the slightest doubt might be explicitly removed concerning marriages, whether between non-Catholics or..."

[*Latin ed. p. 637*]

MARRIAGES. 637. Marriages contracted only before a non-Catholic minister – and in order to remove all doubt concerning mixed marriages, those not contracted according to the form prescribed by the Council of Trent – in order to remove all anxieties of conscience: this had indeed been done in several provinces of Germany. Question. "Whether the opinion of the Archdiocesan Curia of Freiburg should be upheld in this case." RESOLUTION. – The Sacred Congregation, after discussing the matter in its meetings held on December 1, 1866, decided to respond: The opinion should be upheld, and the Archbishop should warn the parish priest to be more careful in the future in granting testimonial letters. FROM THIS, ONE MAY GATHER: I. That it is certain, according to the Apostolic See, that mixed marriages, or marriages with heretics, not contracted according to the norms of Trent, where the Decree *Tametsi* has been published and is in force, are, in general, null. II. For heretics, cleansed by the sacrament of baptism, possess the indelible character of divine filiation (contracted, indeed, to their own detriment), and although they have been banished from the tree of life by their own fault, they cannot refuse the power of the Church, which can extend itself to all those who are marked by the perpetual character of Christ the Lord. III. The Decree *Tametsi*, both according to the intention of the Fathers of Trent, and according to the constant practice of the Holy See and the Church, includes also heretics who reside in parishes subject to the Decree. IV. Therefore, all the questions that arise concerning such marriages do not pertain to the principle of law, but rather to the application of that same principle to the particular circumstances and conditions of the case (1). V. In the present case, the Decree was in force in the parish of both betrothed, and therefore both betrothed were subject to it. (!) We

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shall speak more fully about this matter on another occasion.

[*Latin ed. p. 638*]

638. MARRIAGES. VI. For what reason, according to the law of Trent, has a marriage been considered null, either because of the absence of a Catholic parish priest, or also because of the absence of a legitimate territory without proper delegation? FROM THE HOLY CONGREGATION FOR THE BEATIFICATION AND DECLARATION OF THE MARTYRDOM OF THE VENERABLE SERVANTS OF GOD: ALPHONSUS NAVARRETE, OF THE ORDER OF PREACHERS; PETER DE AVILA, OF THE ORDER OF MINOR FRATI SANCTI FRANCISCI; PETER DE ZUNIGA, OF THE ORDER OF EREMITAE SANCTI AUGUSTINI; CHARLES SPINULA, OF THE SOCIETY OF JESUS; JOACHIM PIRAIAMA OR DIAZ; LUCIA PLEITES, AND OTHERS, BOTH FROM THE SAID ORDERS AND ALSO FROM SECULAR INSTITUTIONS. Concerning the question: How can the process proceed towards the Beatification of these Venerable ones? DECREE OF THE SERVANTS OF GOD. "In the wonderful vision of the Apocalypse, the Apostle John saw beneath the altar the souls of those who had been slain for the Word of God, and he heard a voice saying to them, "Rest a little while, until your fellow servants and your brethren, who are to be slain as you were, shall have completed their number." A great multitude, which no one can count, of brothers and servants in heaven, were certainly counted at the beginning of the seventeenth century, and there were five hundred and twenty Martyrs, who washed their robes and made them white in the blood of the Lamb; and these, clothed in white robes, with palms in their hands, came from the coasts of Lapland, and before the throne of God and in..."

[*Latin ed. p. 639*]

CHAPTER 63. Servants stand before the Lamb, day and night. What John foretold in his vision is now made manifest to us through the supreme teaching of the Apostolic See. For the most illustrious cause of the Japanese Martyrs, having been repeatedly brought before the Congregation of Sacred Rites, it was decreed by the Most Holy Father, Pope Innocent XI, of blessed memory, that their martyrdom was established on the part of the tyrant. And this was not enough, for two equally weighty doubts remained to be investigated, namely: whether their martyrdom was established on the part of the sufferers, and also whether and concerning which miracles or signs it could be affirmed, so that we might rightly consider these outstanding Japanese champions among the blessed martyrs of God, and their relics might be placed beneath the altar. This, which for a long time the illustrious Orders of the Preachers, the Franciscans, the Augustinian Hermits, and also the members of the most excellent Society of Jesus, together with the Apostolic Vicars of Japan and neighboring regions, had earnestly

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desired, was accomplished by the Most Holy Pope Pius IX. For he wished that the cause be examined twice in special meetings of the Congregation of Sacred Rites, so that the judicial form, which has been observed from the beginning, might be maintained. Having considered the opinion of this Holy Order, His Holiness duly decreed, on the fourth day before the Kalends of March of the following year, concerning the first doubt, that the martyrdom was established on the part of the sufferers, so that in the case in question, the process could proceed to beatification; and concerning the second doubt, that there were established four signs, namely the twelfth, thirteenth, and fourteenth. After Peter spoke through the Supreme Pontiff, the cause was concluded. Nevertheless, the same Holiness ordered that, in accordance with the Constitutions of the Supreme Pontiffs and the decrees of the Sacred Congregation, the final doubt be discussed in the General Congregations for the completion of the series of acts: whether, with the decree of Innocent XI, of blessed memory, confirmed on the ninth day before the Kalends of February of the year 1687, and another decree most recently issued by our Most Holy Pope Pius IX, on the fourth day before the Kalends of March of the current year, it is permissible to proceed to the solemn beatification of these venerable servants of God. This was indeed done in the Congregations on the Ides of April of this year, in the Pontifical Vatican buildings, in the presence of our Most Holy Pope; in which the Most Reverend Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, presided over the Congregation of Sacred Rites.

[*Latin ed. p. 640*]

1540 JAPAN. The cause was presented, and all the Most Reverend Cardinals and Consultors gave a favorable opinion. However, considering that the Most Holy Father had reflected upon that which was said by John the Evangelist in the Apocalypse, concerning a vision, he judged that it was still prudent to await a time, so that, in the meantime, through fervent prayers, light and help might be obtained from the Most High, seated above the Cherubim. Finally, when the annual commemoration of the Most Holy Virgin Catherine of Siena, the Principal Patroness of the Alma City, and in Aversa, a comforter in this time of calamity, returned – whose footsteps many invincible women, martyrs of Japan, have followed on the path of virtue – when His Holiness had offered the salutary Host in his private Vatican chapel, he proceeded to the monastery of the Eremites of St. Augustine, whose institute many of these same martyrs had embraced; and ascending to the library called the Angelic Library, there, having summoned the Most Eminent and Most Reverend Cardinal Constantino Patrizi, Bishop of Oporto and Santa Rufina, Prefect of the Congregation of Sacred Rites and Relator of the Cause, together with Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and with them present, he solemnly declared: "That it is permissible to proceed to the solemn Beat-

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ification of these Venerable Servants of God." He ordered that this decree be made public, that it be recorded in the Acts of the Congregation of Sacred Rites, and that Apostolic Letters, in the form of a Brief, concerning the solemnities of the Beatification, be issued to be celebrated whenever desired in the Patriarchal Basilica of the Vatican, on the eve of the Kalends of May in the year 1867.

L. * S. C. Episc. Portuensi et S. Rufinae, Cardinal Patrizi, S. R. C., Prefect. D. Bartolinis, R. C., Secretary.

[*Latin ed. p. 641*]

641 JAPAN, FROM THE ACTS OF THE CAUSE OF THE JAPANESE MARTYRS. Concerning the Japanese. Besides the twenty-six Martyrs of Japan, who were enrolled in the Calendar of Saints by Our Most Holy Father, whom God may preserve for a long time, in the year 1862, many other Christian heroes were killed in the same land of Japan, from the year 1617 until the year 1632. Concerning these Martyrs, proceedings have already been held several times in the Congregation of Rites. Having been designated by the commission of Urban VIII, the processes were completed with Apostolic authority, first in Manila in the Philippine Islands, and then once and again in Macao in China: the validity of these processes having been proven, a preparatory Congregation was held in the year 1675, and a preparatory Congregation in the year 1677. However, since at that time the practice established by Benedict XIV was still in force, and subsequently abolished, namely, that "doubts should be raised separately, concerning the cause of martyrdom from the side of the tyrant, and concerning the martyrdom from the side of the victims," the matter was first debated in order to determine whether "there existed or not the intention" on the part of the tyrant "to inflict death out of hatred of the faith," as indeed occurred in the Congregation of Rites held on January 25, 1687, in which it was decreed that martyrdom existed, from the side of the tyrant, in the cause and to the effect in question. The acts did not immediately cease; but for certain reasons, and not even reasons of great importance, they were delayed until these times; and indeed, you will not find a sufficient reason for this delay, unless you say that God has assigned to this cause the present age, so that the glory of so many martyrs might now revive, and shine forth splendidly in the Catholic world. Although, in the very land of Japan, legitimate investigations could not be carried out, owing to the ongoing persecution, nevertheless, more than ninety witnesses were found, who, having been questioned by ordinary and Apostolic authority, gave testimony concerning the truth of the martyrdom: of whom some testify that they themselves saw it with their own eyes, others that they heard the whole matter from those who were present, while still others confirm it from notoriety, public voice, and fame. And indeed, the number of these witnesses could not be lacking; since the prelates and ministers of justice

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of the cities usually did not deny to all Christians the opportunity to testify concerning the martyrdoms.

[*Latin ed. p. 642*]

642 JAPAN. It is said that, so that the terror resulting from the death of the Martyrs might spread more widely, three, four, twenty, and sometimes even thirty thousand people were present. Indeed, almost all the witnesses who attest to the notoriety, public voice, and fame confirming the events, resided in Japan, in Nagasaki, or in the surrounding areas at the time the Martyrs suffered. And not a few of these witnesses knew the servants of God personally, saw them standing in prison, received letters from them, and after their death, collected their relics. These accounts are generally found in the trial records. But, in addition to the trial records, there are several letters in which the Christian Martyrs themselves testify, either about the interrogation held before the judges, or about the torments and torments they suffered in prison, or about the incredible fervor with which they burned, and the joy with which they faced death amidst the most severe tortures. Finally, for greater confirmation, there are authentic accounts written within the very kingdom of Japan and sent to Europe. For, after the execution of the martyrs, the witnesses, having been questioned, wrote down accounts of the martyrdom at the order of ecclesiastical prelates; and many of these authors themselves later suffered martyrdom.

DISPUTATION ON THE MATTER.

ON THE STATE OF THE QUESTION. — Since the general question of martyrdom could no longer be doubted; for it had long been defined that martyrdom consists of the tyrant inflicting death out of hatred for the faith; two related questions remained to be resolved, which, although they concerned the facts, nevertheless involved some legal inquiries. The first question that remained to be resolved was: who were those whose martyrdom was so certain that they could be reckoned among the Blessed? And this question, as is evident, involves the question of how certainty about martyrdom must be established in order to reach a decision regarding Beatification. The second question concerned which of the many miracles presented or signs should be deemed worthy of approval.

[*Latin ed. p. 643*]

I. QUESTION. THE PROMOTER OF THE FAITH, CONCERNING 643 SUCH QUESTIONS. To resolve these two intertwined questions, the Promoter of the Faith opened the way for himself by briefly presenting certain rules or criteria, which, after being established through analysis, he would apply to each individual question. To ascertain whether a martyrdom exists, both materially, in terms of the sufferings, and formally, the Promoter of the Faith noted: 1°. At least two eyewitnesses are required, or at least one

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eyewitness, and another who heard from witnesses, of whom at least one must have undergone examination in the Apostolic process. In this case, two miracles are sufficient to obtain beatification, and this is evident from the general decree of Benedict XIV, issued on July 17, 1754. 2°. If there are no eyewitnesses, and no one who heard from witnesses, then subsidiary evidence from witnesses who heard reports, and other supporting evidence, may be admitted, provided that "such and so much" certainty of moral martyrdom arises, that it is not "impossible," but rather "imprudent" to render judgment to the contrary, as taught by Benedict XIV in his general decree issued on April 23, 1741. In this case, the formula of suffrage should not be absolute, but rather should state: that the martyrdom is so established that the process may proceed to further stages. 3°. The same should be said if there is one eyewitness, and others who heard reports. The distinction lies in the fact that in this case, three miracles or signs are required to obtain beatification, while in the first case, four are deemed necessary. 4°. Among the subsidiary proofs of martyrdom to be considered are also authentic reports, and these, by virtue of the indulgences granted by Pope Gregory XVI and the Holy Father, have the same force as a process constructed with ordinary authority, in the cause of the Martyrs of China, Tonkin, Cochinchina, and Korea. 5°. Although the question of the necessity of miracles in the causes of Martyrs has not yet been definitively defined by the Holy Congregation in abstracto; nevertheless, based on its practice, miracles or signs are required; and this is specifically evident from the cause of Blessed Josaphat, Archbishop of Polotsk. When the suffragators disagreed regarding the necessity of miracles, as reported by Benedict XIV, book 1, chapter 30, paragraph 3, the Holy Sacred Congregation wrote: "Proposed by the Most Eminent Pontiff, with a disagreement of opinions, what should be done..."

[*Latin ed. p. 644*]

1)44 JAPAN. "While the Servant of God, Archbishop Josaphat of Polotsk, was under consideration, and concerning whether to proceed to further investigations, not concerning miracles, but concerning whether the miracles were to be known as true, the Holy Congregation, wishing to declare nothing in this very difficult matter, and proceeding with the most cautious and valid opinion, in a matter in which the Apostolic See must proceed with the utmost care, and according to ancient practice, ordered the miracles to be examined with unanimous consent, on the 15th of September, 1642."

6°. Miracles, whether in the causes of Martyrs or of Confessors, must at least be proven by two witnesses who have seen them, examined in the Apostolic process; otherwise, other subsidiary proofs, whether from witnesses who have heard, or from authentic accounts, or finally from historical sources, are entirely excluded by Benedict XIV, who notes that new miracles, fully confirmed by witnesses who have seen them, may, if God

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wills, occur daily. Decree general, 1741.

With these criteria established, the Promoter of the Faith examined each martyrdom. Concerning the first martyrdom, in which two Martyrs are presented, the Promoter of the Faith affirmed that witnesses who had seen them testified, namely witnesses VIII and IX, from the Manilian process constructed in the year 1624. But the former witness only stated that he had touched the bodies of the Servants of God after the martyrdom; he did not state whether he was actually present at the killing, especially since witness IX stated: "Many Japanese were present at the martyrdom of these Fathers, and afterwards many more came to collect the relics of their garments." But even if witness VIII had not been present at the martyrdom, he had certainly learned about it from other eyewitnesses, and therefore, he concluded that, based on the presented criteria, it could be inferred that the martyrdom of both was established, and that two miracles were sufficient for their Beatification (1).

(i) Concerning each martyrdom, we had intended to provide a brief note at the bottom of the page, similar to annotations, which would certainly be pleasing to our readers; for they would have seen how steadfastly these heroes, of different ages and conditions, endured their martyrdom, how ardently they desired to avoid death for the sake of Christ the Lord, how much praise they gave to God amidst the most bitter torments; such deeds are of such a nature that they deserve to be a splendid argument for the divinity of the Catholic Religion; but since it would prolong our work too much, we decided to refer our human readers to more extensive accounts, which have already been written about these Martyrs, or which will be published.

[*Latin ed. p. 645*]

JAPAN. 645. Concerning the second and third martyrdoms, in which five heroes of our Religion perished: it is clearly established by eyewitness accounts. Concerning the fourth martyrdom, in which one martyr died, and many testified based on hearsay, public voice, and reputation; therefore, it was deemed necessary to respond: so that the martyrdom is established that it may proceed to further steps, namely, the examination of four miracles. Concerning the fifth, sixth, and seventh martyrdoms, in which seventeen Christians were killed: this is established by eyewitnesses. Concerning the eighth martyrdom, in which five perished, it is established by one eyewitness; others were present who heard from those who saw, and from public voice and reputation, and also from an authentic account, and therefore it is clearly established that there was a martyrdom. Concerning the ninth, tenth, and eleventh martyrdoms, for many of those who perished in these slaughters, it is established by eyewitnesses; however, with the exception of Augustine Ota, in the ninth martyrdom, his martyrdom is proven by one eyewitness, and by others based on hearsay, public voice, and reputation,

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and from an authentic account; therefore, his martyrdom is established to such a degree that it may proceed to further steps, namely, the examination of three miracles. Concerning the twelfth martyrdom. In this martyrdom, only four heroes are counted as having perished, but from the most recent documents, it is evident that two others were killed, who were members of the Franciscan Order: of the three former, one testified based on what he saw, while the others testified based on hearsay from those who saw, and from public voice and reputation; concerning the others, witnesses were present who heard from those who saw, and from public voice and reputation: therefore, the martyrdom of the three former is clearly established; concerning the others, it is established to such a degree that it may proceed to further steps, namely, the examination of four miracles. Concerning the thirteenth, fourteenth, and fifteenth martyrdoms. Regarding the fifteenth martyrdom, it seemed to the Promoter of the Faith that Mancio Arachi should be removed, who died in prison, and it was not apparent whether he perished from his suffering, or whether he died. Concerning the others, the martyrdom is established by eyewitnesses. Concerning the sixteenth martyrdom, in which three perished, one witness testified based on what he saw, others testified based on hearsay from those who saw, and from public voice and reputation, and there are authentic accounts available; therefore, the martyrdom itself is established.

[*Latin ed. p. 646*]

646. Concerning the seventeenth, eighteenth, nineteenth, and twentieth martyrdoms: it is clearly established by eyewitnesses. Concerning the twenty-first martyrdom, in which only one person was killed, one witness testifies to having seen it, others to having heard about it, publicly and by reputation; and to these are added an authentic account; therefore, it can be concluded that the martyrdom is established sufficiently to proceed to further steps, namely, the examination of three miracles. Concerning the twenty-second martyrdom, in which six martyrs are presented: it is established by eyewitnesses. Concerning the twenty-third martyrdom, in which six heroes were also killed, one witness testifies as an eyewitness from the Apostolic process of Lapone; the others are also eyewitnesses from the process of Macba, which was completed with ordinary authority, although the Holy Roman Church had already sent a missive concerning it; with the addition of another eyewitness brought by the Apostolic Inquisition: it is clearly established that the martyrdom occurred. Concerning the twenty-fourth martyrdom, in which two died in the prison of Vomure, worn out by suffering, it is established by witnesses who heard about it, publicly and by reputation; and therefore, it is established sufficiently concerning their martyrdom to proceed to further steps, namely, the examination of four miracles. Concerning the twenty-fifth martyrdom, in which one person perished, witnesses

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testify to having heard about it from those who saw it, as well as having heard about it publicly and by reputation, and it is also established by an authentic account; therefore, it is established sufficiently concerning the martyrdom to proceed to further steps, namely, the examination of four miracles. Concerning the twenty-sixth martyrdom, in which four were killed, it is established in the same manner. Concerning the twenty-seventh martyrdom, in which three perished, of whom two witnesses saw the bodies still hanging in Palis, but who were not present at the martyrdom itself; other witnesses are present who heard about it, publicly and by reputation, and an authentic account is available: therefore, it is established sufficiently concerning the martyrdom to proceed to further steps, namely, the examination of four miracles. Concerning the twenty-eighth martyrdom, in which one was killed, many testify to having heard about it, publicly and by reputation, and it is evident from an authentic account; therefore, it is established sufficiently concerning it to proceed to further steps, namely, the examination of four miracles. Concerning the twenty-ninth martyrdom, witnesses testify to having heard about it from their ancestors.

[*Latin ed. p. 647*]

JAPAN. Six hundred and forty-seven [witnesses] testified, and many more by public proclamation and reputation, and it is established by an authentic account; therefore, it is established concerning their martyrdom to such an extent that further proceedings can be initiated, namely, the examination of four miracles. Having made this clear statement, the Advocate for the Faith proceeded to the examination of the signs, which were presented by the martyrs, and which numbered more than twenty. However, with the exception of three or four at most, he considered the rest to be to be excluded, either because of a lack of legitimate proof, or because of their nature, which did not seem to be miraculous at all. He certainly admitted the signs that were presented under numbers XII, XIII, and XIV, which were clearly proven by the testimony of witnesses; and furthermore, he admitted that he doubted the sign that came under number IV. For the fourth sign consisted of this: that the bodies of two martyrs, enclosed in a chest and bound with weights, which had been thrown into the sea, after six months, the chest rose to the surface at Gafsa, together with the complete garments of the same martyrs; and this, it seemed, could happen naturally if the chest had been sealed in such a way that neither water nor air could penetrate it. As long as such a possibility was not excluded, it seemed to the Advocate that one should doubt that it was a miracle. From what has been stated, this conclusion follows: since sign XII refers to the martyrs designated under numbers 1, 2, 3, 4, 31, and 32, and not to those included in the tenth martyrdom; since sign XIII refers to the martyr designated under number 48, and sign XIV to the martyr 58, who were

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both martyred in the tenth martyrdom, the Advocate concluded that there were two signs available for the martyrs 48 and 58, and therefore, according to the criteria outlined above, it could be said that their martyrdom and miracles, or signs, were so established that it was safe to proceed to further steps. If, however, the Most Reverend Fathers should judge that sign IV should be admitted, which indeed refers to martyrs 1 and 4, then there would also be two signs available for these, which would be sufficient to determine their beatification, since their martyrdom would be established by legitimate proofs. However, this careful and strict opinion, which the Advocate for the Faith presented, he considered to be, in the present circumstances, to be mitigated. Nor in the Causes of the Servants of God are such...

[*Latin ed. p. 648*]

CIS 1AP0.NGN. asserted that examples were lacking, because sometimes three or four miracles were required for Beatification or Canonization. The Apostolic See, however, had relaxed the strictness of the law, as, for example, occurred in the case of R. Clara of the Cross, of the Order of Hermits of St. Augustine, whose virtues, although perhaps proven by subsidiary arguments, would require four miracles for future Canonization; nevertheless, the response from the Sacred Congregation was that the virtues were so well established that it was possible to proceed to further examination, namely, of two miracles. His Most Holy Lordship approved of this judgment. This also recently occurred in the case of V. Fr. Benedict of Urbino, in which the Holy Pontiff excused the Postulators from the presentation of a fourth miracle.

— REGARDING THE OPINIONS THAT GUIDED THE CAUSE'S ADVOCATE. — The Advocate of the cause, Joseph Pincellotti, drawing upon the sentiments of the *Index of Faith*, with great erudition, attempted to refute those things that seemed to harm the cause. Regarding each martyrdom, he stated that, generally, there abounded witnesses who had seen [the events], while in others, witnesses were lacking who had heard from those who had seen; besides these, there were many others who, although they testified verbally about the public voice and fame, he noted that these should be equated with witnesses who had heard from those who had seen. He maintained that all witnesses who testified had been in Japan or in the city of Nagasaki at the time when the martyrs suffered, and that they affirmed that they had learned of the martyrdom from the public voice and fame, or notoriety, and had received information about the suffering from witnesses who had indeed seen [the events]. To demonstrate this, he recalled the words of the witnesses who not only testified about the public voice and fame, but about a public and notorious fact, and he explained the reason for this notoriety, stating that many who were present at the martyrdom, upon leaving the place, immediately recounted and spread

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the news. But regarding Mancio of Aradii, whom the *Index of Faith* considered to be one who should be removed from the list of martyrs, because it was not established that he died in prison, whether he died from suffering or another cause, he responded: that he had already been suffering from a disease and was lying in bed when he was thrown into prison out of hatred for the faith; but that the prisons in Japan were not public, but were established under the open sky, with piles of straw and straw, and that he had been exposed there.

[*Latin ed. p. 649*]

1AP0NEN. Concerning the hardships to which, under any inclement weather, as authentic accounts of P. Bartolus in his *Historia lapon.*, book 4, number 97, page 441, describe, the prisons and tortures endured there by the Martyrs, and how Mancio himself, overwhelmed by suffering, met his end. Furthermore, Cyprian ordered that those who died in common prisons should be considered Martyrs; thus, he wrote in his letter 37: "When to our will and confession in prison and before the tribunals, the time of death is added, the glory of the Martyr is completed. Let the days of their departure be noted, so that we may celebrate their commemorations among the memories of the Martyrs." And St. Augustine commends in Psalm 127, the blessed Felicissimus, who died in prison; and the Church celebrates St. John, the Pope, on May 27, who died in prison.

AS TO WHAT THE PROSECUTOR OBSERVED CONCERNING MIRACLES OR SIGNS. — Having declared the difference that exists between a miracle and a sign, according to the teaching of Holy Scripture, and St. Thomas's declaration in 2, 2, question 178, article 1, to 3, it was read throughout the acts of the Martyrs concerning signs, or those things which preceded, accompanied, or followed the martyrdom; such as, for example, sudden flashes of light seen at the place of martyrdom or on the body of the Martyr; punishments inflicted upon the executioners or tyrants; the preservation of bodies from the savagery of wild beasts, and other portents, which, although sometimes not supernatural in themselves, were understood, from the circumstances, to have been brought about by God, so that He might signify that the suffering of the patient was precious to Him. These signs, both in ancient and more recent times of the Church, have been admitted as confirmation and illustration of the martyrdom.

However, the Prosecutor did not contend that all the signs, gathered from so many processes, histories, and other monuments, were rigorously verified; rather, they were presented with such confidence, so that the doubt might be resolved: that the martyrdom was confirmed by many signs. But the Prosecutor was distressed that some were reluctant to acknowledge that Sign IV, which had been duly proven, was exceptionally brilliant, and therefore, among other things that follow, he noted: "All the circumstances of the case suggest that it is impossible to deny that

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supposed possibility." If the infidels had persuaded themselves to preserve, as much as possible, the integrity of the Martyrs...

[*Latin ed. p. 650*]

"650 JAPAN. The bodies, in order to achieve this, ought certainly to have exerted all effort and diligence, and thus to have embalmed the bodies themselves with unguents and balsams; to have sought incorruptible wood; and to have joined the *capsa*, not to mention the coffins, with pitch on every side. But their purpose was entirely different, indeed, contrary. For since a great multitude of Christians had perished by martyrdom, and each one endeavored with all his might to obtain the relics of the martyrs, the executioners, by order of the Prince, immediately after the heads were cut off, consigned the bodies of the martyrs to the flames. But the Christians, not ceasing, dug up the very earth at night, as the Witness II says, "to avoid the stench and swelling of the corpses, they dug them up and, having placed them in the *capsa*, cast them into the sea." Therefore, the plan of the infidels was to completely remove the bodies of the martyrs from investigation and veneration by the faithful. Hence, they chose *capsas*, not extraordinary ones, but common ones, which the same Witness II calls *rapsasmortuaria*; having placed the bodies inside, and having closed them in some way, and having secured them with great weights, they cast them into the sea, so that, dissolved and consumed by moisture in a short time, they could not in any way be obtained by the Christians. Therefore, after the *capsa* had decayed in the depths of the sea for six months, and if necessary, the wood and all the coffins were expanded by moisture, it was impossible that the water would not penetrate inside, and that the bodies and garments would not be soaked. Therefore, both the integrity of the garments and the bodies must necessarily be attributed to divine power. But even if we suppose that the *capsa* was so perfectly sealed that the water could not penetrate, the bodies and the garments themselves could not have remained intact for six months. For some degree of decay is certainly possible if we are dealing with bodies that have been purged by long illness and putrefaction: but if we are dealing, as is the case in the present matter, with bodies that are vigorous, healthy, in the prime of life, killed by violent death, and extinguished in a single blow, this is absolutely impossible. This, the Advocate demonstrated both from experience and from the teachings of the physicists. After these things, the Advocate, maintaining that those three signs (which the Promoter of the Faith considered to be to be admitted) did not refer only to one or another martyr, but at least implicitly to all, then demonstrated with outstanding erudition; in the cause of the martyrs, miracles or signs are not required for beatification. He demonstrated this

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from the universal practice of the Church before the institution."

[*Latin ed. p. 651*]

From the Sacred Congregation of Rites. Indeed, it was sufficient for the early centuries of the Church to inquire whether there existed accounts and other monuments concerning the martyrdom and the cause of the martyrdom. Moreover, St. Eulogius, in his *Memoria* and *Apologia* for the Holy Martyrs of Corduba, in the Patrology, volume 15, vehemently attacked certain heretics who accused Catholics of venerating the Martyrs of Corduba, of whom no miracles were reported after their death. Whether the witnesses of God (as he calls them) manifest miracles, or whether they complete their blessed struggle without miracles, it makes no difference: for the heavenly Author expects only this from them, that they, until the end, do not abandon the constancy of their hope, and that they valiantly complete the struggle, so that they may be added eternally to the ranks of the Saints and rejoice in the perpetuity of salvation, as the Lord says: "He who perseveres to the end shall be saved." Afterwards, when the custom arose of granting altars to Confessors, the Church of Christ, while requiring miracles for the Martyrs, followed the ancient discipline concerning them, as can be seen in the liturgy itself. For while the Church in its hymns praises the Confessor, whose outstanding merit often restores the health of those who are widely afflicted, and whose members, weakened by illness, are restored to health, in the case of the Martyr, it presents only constancy: "He bravely endured the torments, and manfully bore them, and shedding his blood for you, he possesses eternal gifts." St. Benedict XIV, in his *De Canonizatione*, book 1, chapter 29, paragraphs 1-5, is entirely devoted to demonstrating and confirming this truth with added examples. This practice has been consistently observed by the universal Church for sixteen complete centuries. And Baronius, in the year 58, derives it from Apostolic tradition: "Their birthdays (thus Baronius) have always been celebrated without any evidence of miracles; and no one in the new Church would have dared to introduce this observance without the authority of the Apostles, and without any testimony from Holy Scripture, nor would it have been received by the universal Church, unless all knew that it had originated from Apostolic tradition." He proves a second point: from the further practice of the Church and after the institution of the Sacred Congregation of Rites. He notes that previously, Bishops could permit the cult, but Alexander III, in order to prevent abuses, revoked this power by his Apostolic Decree to the Holy See. From that time until Urba -

[*Latin ed. p. 652*]

652. It is known that, in times past, certain Martyrs received honors at the Altar, and that there was no distinction made between the cult permitted and that which is obligatory, nor between Beatification and Canonization;

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but that all causes were directly and immediately related to Canonization. Furthermore, the formal Beatification was instituted by Alexander VI; and that at that time, the judicial form was not observed, as noted by Matt. de Canoniz. Sanet. I. 1, chapter 5, number 15, and before him, Molph. Cons. 46, n. 21, and as can be seen in the Bulls for St. Thomas of Canterbury, St. Edward the King, and St. Ubald the Bishop. If, in the Canonization Bulls for St. Thomas of Canterbury, St. Peter of Verona, and St. Stanislaus of Cracow, mention is made of miracles, it does not necessarily follow that miracles are required when the martyrdom and the cause of the martyrdom are established; therefore, as Cepario stated: "From the time of Alexander VI until these times (up to the year 1684), it has never been required of Martyrs that miracles be performed; and no example can be given to the contrary; but many are venerated in whom no mention of miracles is made." The Congregation of Sacred Rites instituted three designated Auditors for the Rota, who were to oversee the causes of Canonization; and these, according to the ancient practice of the Church, always maintained the opinion that miracles were not required in the cases of Martyrs, as can be seen in the Relata for St. Bonaventure, for 26 Japanese Martyrs, and for St. Josaphat the Martyr. Indeed, the question of the requirement of miracles was raised, and this matter was debated in a particular Congregation, as reported by Benedict XIV, I. 1, chapter 30, number 3: "It was debated in general, concerning the causes of Martyrs, which are usually examined in the Sacred Congregation, whether miracles are required by the Apostolic See for declaring a Martyr; and some, namely, Father Luke, Father Alciatus, although here ambiguously, Monsignor Albicius, Ghislerius, Dunozetti, and Homodeus, were of the opinion that they are not required, because martyrdom, like baptism, operates in the present remission of sins and confers grace; and because countless Martyrs are venerated in the Church, of whose miracles there is no record, nor does the Church make mention of them." Others were of the opinion that they are required, namely, Monsignor Oregius, Sacrista, Master of the Sacred Palace, Bishop of Città della Pieve, and the Promoter.

[*Latin ed. p. 653*]

"Concerning the matter of faith, if it is not evident from the internal act, and I, as Secretary, must say: *from the fact that, in order to complete the martyrdom, the will to suffer for the faith or for justice must be proven, and that there must be perseverance in charity, even until the end*; this truth, which resides in the heart, which God, the scrutinizer, examines, and which depends on the final internal act, cannot be proven except by a sign from God, which is a miracle, or something wondrous. Thus, these opinions seemed to be reconciled, on the supposition that, indeed, with true martyrdom, miracles are not necessary; but in order to prove that this and this particular martyrdom is true, miracles are required. — On

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September 13, 1642.

From this presented question, and after rejecting the Secretary's singular opinion, the Orator pointed out that it could be argued from these two opinions that miracles are not necessary in the cases of martyrs, but are necessary if, in a particular case, the martyrdom is not evident, and the cause of the martyrdom is not clear. He confirmed this from the current practice concerning the bodies of martyrs found in crypts: provided that, from the inscription, from the blood, and from other undeniable signs, it is evident that they were put to death for hatred of the faith, they are immediately, without any requirement of miracles, publicly venerated as martyrs. To this, he also added the ancient custom of writing in the causes of martyrs presented before the Sacred Congregation, such words as: "For the beatification, or declaration of martyrdom"; while in the causes of Confessors, the words "For the beatification, or declaration of virtues" are not written. He proved 4th, by the authority of most theologians and canonists, who teach that martyrdom itself is an argument of sanctity, and that miracles are not necessary for the canonization of a martyr, and this was repeated from Apostolic tradition. He proved 5th, from the invalid reasons that were presented by those who held a different opinion. Finally, he proved it by reason, namely, by citing a series of Doctors who expound the Catholic doctrine on the efficacy of martyrdom in achieving eternal salvation, so that Innocent III, in chapter *Marthae* of the *Celebration of the Mass*, said: "It is an injustice to the martyr who prays for the martyr, because Saint Augustine, in sermon 2 on the words of the Apostles, said these things, which indeed must be said to be false, if the certainty of martyrdom is not sufficient for the certainty of beatitude." And no less..."

[*Latin ed. p. 654*]

654 JAPAN. To desire that God may have His martyrs venerated in the Church, and to present them as an example to the faithful, is in accordance with the words of Matthew 10: "He who has confessed Me before men, I will also confess him before My Father." And in the Apocalypse 6: "I saw under the altar the souls of those who had been slain." The Fathers and theologians recognize in these words a divine promise, not only of heavenly glory, but also of public veneration of the martyrs in the Church.

However, the speaker continued concerning confessors, it cannot be said that this necessarily applies. For, from the declaration of virtues, it does not directly follow the final perseverance, as it does from the declaration of martyrdom. And although it might be known from other sources of their perseverance, yet without miracles, it does not follow that it is by divine will concerning their glorification on earth. Therefore, the Church must seek miracles to be certain of both. And although martyrs are venerated, even those children who have been killed for the faith, children who have not been cleansed by baptism are not to be venerated.

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Briefly describing how our martyrs of different ages and conditions were subjected to a harsh and grievous martyrdom, and with what cheerful spirit; with what burning desire they longed for the Catholic faith and for Christ, to suffer martyrdom, he concluded that all these things were beyond the power of nature, and were a sign illuminated by miracles themselves.

After these extensive and erudite discussions, the speaker said that it does not follow from what has been said that signs are necessary in all cases of martyrdom. He stated this with Schacco, section 10, chapter 2, saying: "It must also be noted that it can happen that someone is killed many times for hatred of the Christian and Catholic religion, provided that the form of judgment is observed."

In the former manner, if a servant of God is imprisoned, he is questioned about his religion, and tortured so that he denies Christ, and if he refuses to deny Christ, he is condemned by death, either by the head or by another form of death, and thus he dies for Christ.

However, if a servant of God is killed for hatred of the Catholic religion, when, through some conspiracy of pagans, schismatics, or heretics, he is killed; as we read happened to St. Peter, concerning his martyrdom; or even through the conspiracy of the wicked, as happened to St. Thomas, Archbishop of Canterbury, who was killed by the ungodly for defending the ecclesiastical laws against the King of England; to whom, it is said, many would be grateful.

[*Latin ed. p. 655*]

CHAPTER 65. Sometimes, a priest is murdered by robbers. Also, sometimes a servant of God is killed by some prince or magnate, without any due process of law, but out of anger and rage, either by himself or by his ministers; and because all these give witness to Christ through their blood, it is inquired about both groups whether miracles are required for their canonization. And thus, the speaker concluded, with the same author presiding, that miracles are not necessary for martyrs of the first order, because the Church knows of the death inflicted out of hatred for the faith, and of the death suffered for that reason; but they are required for martyrs of the second order, because in the latter case, it cannot be known whether they were in one condition or the other. From this, he explained the reason why signs were required before the establishment of the Most Holy Congregation in the cases of St. Thomas of Canterbury, St. Peter the Martyr, and St. Stanislaus of Cracow, although in these cases, only an extrajudicial investigation was conducted. The first decree issued after the establishment of the Most Holy Congregation, which concerns the requirement of miracles, is that which was mentioned above by the Promoter of the Faith, namely, in the case of the Most Blessed Josaphat of Polotsk. But the speaker, with brilliant observations, showed that this decree confirms the doctrine previ-

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ously expounded. In that case, Anthony Cerri, who was at that time the Promoter of the Faith, argued that the cause of death had not precisely arisen from hatred of the faith, but from a conspiracy of schismatics, and from the motive of hatred and private revenge; although the Postulators used every effort to refute this objection; nevertheless, a certain doubt about the cause of the martyrdom remained in the minds of the Consultors, so that, as the Congregation was convened, many, as it is said in Matthew, page 5, chapter 3, gave a negative vote on the cause of the martyrdom. But since others still believed that the cause of the martyrdom was proven, and because of this diversity of opinions, they decided to choose the safer course, and therefore required miracles. Therefore, he said, the disagreement of opinions was not about the abstract question of the necessity of miracles, as it seems to be indicated in the works of Benedict XIV, but about the particular cause of the martyrdom of the Most Blessed Josaphat; hence, those words of the decree should be properly explained according to the ancient practice, which, if applied to the ancient practice of the Church in an abstract way for the causes of martyrs, would be entirely false.

[*Latin ed. p. 656*]

6O6 SAPONEK. Thus, proceeding, the Advocate explained and clarified other examples, which might at first appear to be objections, concluding that in the present case, there was abundant evidence not only of the cause of martyrdom, but also of the martyrdom itself; therefore, it was not necessary to proceed to the examination of miracles; although many signs existed which illustrated the martyrdom itself, these were not fully proven according to the established rites, because at the time when the process was constructed, miracles were not inquired about in the causes of martyrs. With these and other similar points presented copiously and learnedly, the proposed cause was to be judged under the doubts which are read in the Decrees already presented: to which the first response was given: that the martyrdom was sufficiently proven from the sufferings, so that in the case in question, it was possible to proceed to Beatification; and to the second: that the signs [of sanctity] were sufficiently proven, according to the canons. From this, the following are gathered: I. It has always been established according to Catholic doctrine that he who has endured death inflicted out of hatred of the faith is a true Martyr, and certainly obtains eternal salvation from the martyrdom itself endured. II. However, it has sometimes been doubted whether signs [of sanctity] are required in order that someone may be declared a true Martyr, so that he may be publicly enrolled in the catalogue of the Blessed. III. The Roman See, from practice, has required signs [of sanctity] if there were any deficiencies in the proofs concerning the cause of the inflicted martyrdom, or concerning the martyrdom itself endured for that cause. IV. In a cause of martyrdom and of the cause of martyrdom duly proven, the examination of signs [of sanctity]

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has not been refused, which, although not necessary for Beatification, do contribute to the splendor of the endured martyrdom, as has happened in the present most splendid cause. V. However, these things cannot be said when dealing with the causes of Confessors, in whom, although virtues are proven up to the time of death, miracles are required both to confirm that the Servant of God died in the state of grace, and also that public worship may be rightly attributed to him, which God, by His testimony, exalts in the earth after death.

[*Latin ed. p. 657*]

FROM THE SUPREME ROMAN AND UNIVERSAL INQUISITION. CONCERNING CATHOLIC UNITY. Nos. 16, September 1864; 28, November 1865. PREFACE: It is known that among the supreme tribunals of the Holy See, there exist certain ones in which all matters pertaining to the faithful and to the interests of the Church are treated with the utmost rigor of secrecy; and although the matters discussed may concern doctrine alone, nevertheless, these same tribunals do not publish them, unless there is urgent necessity or at least great utility. However, those to whom these doctrinal notices are sent are often seen to publish them, either in books or in public periodicals. Therefore, in this last fascicle of the second volume, we have collected together those acts which we know have been published in recent times: of which the three that immediately follow are documents to be held in high regard; and these demonstrate in what true Catholic unity consists, and that no one can be Catholic unless he belongs to that unity. The following documents are: (contents). 1. From the Supreme Roman and Universal Inquisition to all the Bishops of England. A letter: "It has been reported to the Apostolic See that certain Catholics and even ecclesiastical men have given their names to a Society, established in London in the year 1857, which claims to promote Christian unity, and that several articles have already been published, which are inscribed in the name of Catholics who applaud this Society, or which are attributed to ecclesiastical men who recommend the same Society. And indeed, what is the nature of this Society, volume II, fascicle XXIV, 43.

[*Latin ed. p. 658*]

658 ON CATHOLIC UNITY. It is easily understood, not only from the articles of the periodical entitled "The Union Review," but also from the very leaflet by which members are invited and enrolled, that this [organization] was formed and directed by Protestants, who openly profess the following sentiment: that the three Christian communions – the Roman Catholic, the Greek Schismatic, and the Anglican – although mutually unprepared and divided, nevertheless claim the name "Catholic" by equal right. Therefore, access to it is open to all inhabitants of every place, whether Catholic, Greek Schismatic, or Anglican; but with the condition that no one is permitted to

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raise questions on the various points of doctrine in which they disagree, and that each person is free to follow the tenets of their own religious confession with a tranquil mind. To all members, the same prayers are to be recited, and to priests, the Sacrifices are to be celebrated according to their intention: so that the three aforementioned Christian communions, as they are presumed to constitute the Church Catholic, may finally, at some time, be united into one body. The Most Holy Congregation, to whose examination this matter was submitted according to custom, after mature deliberation, judged it necessary to take steps to instruct the faithful not to enter into this society, which is led by heretics, and to associate with the same heretics and schismatics. Indeed, the Eminent Fathers Cardinals, who are with me in charge of the Holy Inquisition, do not doubt that the Bishops of that region, for their eminent charity and doctrine, will apply all diligence to demonstrate the vices with which this Society is tainted, and to avert the dangers that it presents. Nevertheless, they would seem to be failing in their duty if they did not more strongly inflame the pastoral zeal of those same Bishops in this matter, which is so grave; for this novelty is all the more dangerous, because it appears to be pious and very concerned with the unity of the Christian society. The foundation upon which this kind of thing rests is that it subverts and distorts the divine constitution of the Church. For it holds that the true Church of Jesus Christ consists partly of the Roman Church, spread and propagated throughout the world, and partly of the Photian schism and the Anglican heresy, with which, just as with the Roman Church, there is one Lord.

[*Latin ed. p. 659*]

ON THE UNITY OF THE CATHOLIC CHURCH. 659 One faith and one baptism. In order to remove the dissensions, by which these three Christian communions are troubled with great scandal, and with detriment to truth and charity, He indicates prayers and sacrifices, that the grace of unity may be obtained from God. Certainly, nothing ought to be more dear to a Catholic man than that schisms and divisions among Christians be uprooted from the very foundation, and that all Christians be concerned to preserve the unity of the spirit in the bond of peace (1). Therefore, the Catholic Church pours forth prayers to God, and exhorts the faithful to pray, that those who have departed from her may be converted to the true faith, and, renouncing their errors, may be restored to communion with the Holy Roman Church, outside of which there is no salvation; indeed, that all men, with God's help, may arrive at the knowledge of the truth. But that the faithful and ecclesiastical men, under the guidance of heretics, and what is worse, with the intention of promoting a heresy most impure and corrupt, should pray for Christian unity, this cannot in any way be tolerated. The true Church of Jesus Christ, established and recognized by divine authority, is marked by four characteristics, which we assert must be believed in

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the Creed: and each of these characteristics is so closely connected with the others that it cannot be separated from them; hence, that which is truly and properly called Catholic must shine forth with the prerogatives of unity, sanctity, and apostolic succession. Therefore, the Catholic Church is one, conspicuous by its perfect unity throughout the world and among all nations; indeed, this is the unity of which the beginning, the root, and the unfailing origin is the blessed Peter, the Prince of the Apostles, and his successors in the Roman Chair, the supreme authority and the highest principal. The Catholic Church is nothing other than that which is built upon one Peter, and rises as a united body, closely connected by the unity of faith and charity: as the blessed Cyprian sincerely professed in Epistle XIV, when he addressed Pope Cornelius in this manner: "That you, our colleague, and your communion, that is, the unity of the Catholic Church, may be approved, firmly and tenderly." And likewise, Pope Hormisdas wished to have asserted the same, when the bishops excommunicated Acacius from communion with the Church, as is stated in a formula confirmed by the testimony of all antiquity, where those who are separated from communion with the Catholic Church are said to be those who are not in agreement in all things with the Apostolic See. And it is far from (1) Eph. 4:3.

[*Latin ed. p. 660*]

660 ON CATHOLIC UNITY. – Whether communions separated from the Roman See can rightly be called and considered Catholic, so that rather, from this very separation and discord, it may be discerned which societies and which Christians neither hold true faith nor the true doctrine of Christ: as has been most clearly demonstrated from the second century of the Church by St. Irenaeus (1). Therefore, let the faithful be most careful not to join themselves to these societies, to which they cannot adhere while preserving the integrity of the faith; and let them hear St. Augustine teaching that there can be neither truth nor piety where Christian unity and the charity of the Holy Spirit are lacking. Furthermore, the faithful should most strongly avoid the London Society, because those conspiring within it favor indifference and cause scandal. That society, or at least its founders and leaders, profess that Photianism and Anglicanism are two forms of the same true Christian religion, in which, just as in the Catholic Church, God is pleased to be worshipped; and that disagreements among such Christian communions should be encouraged, but without violating the faith, because one and the same faith remains among them. This, however, is the height of pestilent indifference in the matter of religion, which in this very age spreads to the great ruin of souls. Therefore, it is necessary to demonstrate that Catholics adhering to this society offer a spiritual opportunity for ruin, both to Catholics and to non-Catholics, especially since, from a vain expectation that the three aforementioned communions, remaining whole and steadfast in their own beliefs, will come together into one, that

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society will turn away from the conversion of non-Catholics to the faith and try to hinder it through publications it disseminates. Therefore, the greatest care must be taken that Catholics, either through a false appearance of piety or through a bad judgment, do not join themselves to this society, of which we have spoken, or to others like it, in any way, and that they are not led away from the perfect unity, which consists in the wonderful gift of God's grace in the steadfastness of Peter, by the deceptive desire for a new Christian unity. Rome, this 16th day of September, 1864. C. Card. PATRIZI. (1) Book III, chapter 3, against the Heresies.

[*Latin ed. p. 661*]

ON CATHOLIC UNITY. 661 II. To the Most Eminent and Reverend Father and Lord in Christ, Cardinal Patrizi, Prefect of the Sacred Office. Most Eminent Lord: "We, the undersigned Deans, Canons, Parish Priests, and other Priests of the Anglo-Catholic Church, earnestly desiring a visible Reunion, according to the will of Christ, among all parts of the Christian family, have read with great sorrow the Letters sent by Your Eminence, entitled 'To all the Bishops of England.' In these letters, our Society, which is founded to promote the Reunion of all Christendom, is blamed for affirming in its program that 'Three communions, namely the Roman-Catholic, the Eastern, and the Anglican, claim the name Catholic by equal right.' Regarding this matter, our program has not expressed any opinion whatsoever. What we have said concerns the matter of fact, not the matter of law; we have merely affirmed that the Anglican Church claims the name Catholic for itself; which is abundantly clear to all, both from its Liturgy and from its Articles of Religion. Moreover, concerning the intention of our Society, it is asserted in these letters that we intend to bring about the union of the three aforementioned communions, while each remains whole and steadfast in its own beliefs. Far be it from us and from our Society to have such a purpose, from which, instead of ecclesiastical unity, would arise the expectation of discord among brothers fighting under the same roof. What we earnestly implore from Almighty God, what we desire with all our hearts, is nothing other than that intercommunion, which, before the division of East and West, existed, established and united by the profession of one and the same Catholic Faith. Indeed, that Society, as mentioned above, ought to arouse in Your Eminence a lesser degree of displeasure, because, abstaining from action, it only prays that, according to the words of Our Lord Jesus Christ, 'One shepherd may be made and one flock.' This is what we place in our prayers, and this sentiment and desire we sincerely profess with heart and voice, in a manly manner, before Your Eminence."

[*Latin ed. p. 662*]

662 ON CATHOLIC UNITY. "Concerning the periodical, entitled 'The Union Review,' there exists between it and our society only a fortuitous con-

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nection, and therefore we are in no way bound by its statements. Indeed, in this publication, various authors express their own opinions, but in such a way that the truth of the Catholic Faith shines forth more clearly from their discussions. It is scarcely to be wondered at that such a method of writing is not common in Rome, where modern controversies are rarely discussed; but in England, where almost every question becomes a matter of public debate, nothing can be successfully established without free discussion. "We, in order that this event may be hastened, have for many years been laboring diligently. If anything should be found to be imperfect in the faith of the flock, in the worship, and in the discipline of the clergy, we strive to improve it beyond all expectation; and, lest 'we be forgotten by others,' we have used that benevolence towards the venerable Church of Rome, which among some formerly made us suspect." "We, Your Eminences, servants of the study of Catholic Unity, humbly declare (1)." "Honorable and Most Beloved Lords." "That you, in letters addressed to me, sincerely profess and express with genuine voice that you desire nothing more than that, according to the words of Our Lord Jesus Christ, there be one flock and one shepherd, this gives great joy to this Sacred Congregation, and it offers the hope that you yourselves will, through the divine grace of the same Jesus Christ, arrive at true unity. However, you must be careful lest, in seeking it, you stray from the path. Furthermore, this Sacred Congregation is deeply saddened that it has come to pass that those Christians who claim to belong to the true Church of Jesus Christ, and who boast of possessing the inheritance of the priesthood and the Catholic name, are divided and separated from the Apostolic See of Peter. This opinion is one that abhors the very notion of the true Catholic Church. For the Catholic Church, as I have warned in my letters to the Bishops of England, is that which is built upon one Peter, and is a united body, closely connected by the bond of faith (1)." Such a letter was signed by 198 members of the Anglican clergy.

[*Latin ed. p. 663*]

ON THE UNITY OF THE CATHOLIC CHURCH. 663 "And from it arises charity" (1). Indeed, this "unity of faith and charity, or communion," from the unchangeable institution of Christ, is not only the most important and fundamental property of the true Church, but also the most certain and always visible mark, by which the Church itself is safely and easily distinguished from all sects, which will be most clearly demonstrated to you, if you wish to carefully examine the matter and consider it with a peaceful mind: first, by the clear testimonies of the Holy Scriptures, and by the signs of metaphors, parables, and images, by which the Church is depicted and, as it were, represented; secondly, by the most excellent documents of the holy Fathers and the most ancient Synods; and thirdly, by the constant method of acting which the Church has always followed from its very beginnings against heretics and schismatics of every kind, even though some

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of them arrogated to themselves the inheritance of the priesthood and the Catholic name. Just as the Church of Christ is called and said to be Catholic because of that very unity, which it maintains firmly throughout all nations and at all times, so also it is called and said to be holy and apostolic because of that same unity; and just as, without such unity, it would cease to be Catholic, both in fact and in law, so also it would be continuously deprived of the signs of holiness and of apostolic succession. But the Church of Christ has never lost its unity, nor will it ever lose it, not even for the briefest of times; for, according to divine prophecies, it is destined to endure forever. How, then, can the Church be believed to endure forever, if, as happens in the changeability of worldly things, age after age were to bring about a new appearance and form, and if the Church itself were ever to depart from that unity of faith and communion, by which it was founded by Jesus Christ and subsequently spread by the Apostles? Therefore, says St. Ambrose, "the kingdom of the Church will remain forever, because it is a single body of faith" (2). Since the Church of Christ is absolutely unfailing, it necessarily follows that it can also be called and believed to be infallible in the transmission of the evangelical doctrine; a gift which the Lord Christ, the Spouse and the Cornerstone of His Church, has bestowed upon His Church with a most wonderful favor.

(1) St. Ambrose, *De Officiis Ministrorum*, Book III, chapter 3, number 19.

(2) *In Lucam*, Book VII, number 91.

[*Latin ed. p. 664*]

064 ON CATHOLIC UNITY: The dogma of the Catholic faith has been struck down. And indeed, who would believe that error could be present in the public and solemn teaching of the Church, which Christ established with this very purpose, so that we would no longer be infants, tossed about and carried away by every wind of doctrine, but that, through the constant presence of those who never abandon us, and through the instruction imparted by the Holy Spirit, who has promised to teach all truth, we might be grounded in the truth; from whom He willed that all nations should be called to obedience of faith, and that they should receive the doctrine of things to be believed and to be practiced, so that he who did not believe those who preach to him, the legitimate Apostles and their successors, would be condemned: to whom this office and authority were attributed for the purpose of prescribing the form of sound words, in which all who are to be instructed in the things of God may agree. Hence, Paul calls the Church the pillar and foundation of truth (2). But how could the Church be the foundation of truth, unless truth were securely derived from it? The Most Holy Fathers also speak with one voice, and proclaim that in the unity of the Church, the unity of the faith and the doctrine of Christ are so firmly established that they cannot be separated from each other;

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which is what is meant by the saying of St. Cyprian, that the Church is the dwelling place of unity and truth (3). The Catholic Church has never doubted this prerogative promised to it, and communicated to it through the constant presence of Christ and the inspiration of the Holy Spirit, whenever it has undertaken to resolve controversies arising from faith, to interpret the meaning of the sacred Scriptures, and to refute errors contrary to the deposit of revelation; for it has always published and proposed its dogmatic definitions as a certain and immutable rule of faith; which, as rules of faith, each and every one ought to assent to with the most intimate agreement, without any doubt, suspicion, or hesitation; but those who stubbornly resist these same definitions, by that very act, are considered to have shipwrecked themselves concerning the necessary faith for salvation, and no longer to belong to the flock of Christ. And this is all the more absurd in those who comment on the Catholic Church as being composed of three communions. The proponents of this view are forced to admit that the infallibility of the Church is necessarily compromised.

(1) Ephesians IV. 14.

(2) 1 Timothy III. 15.

(3) Epistle VIII to Geminus, apud Constant. n. I.

[*Latin ed. p. 665*]

ON THE UNITY OF THE CATHOLIC CHURCH. 665 That unity might be perpetually preserved, and that the opportunity for schism might be removed, the most blessed Peter, above all the Apostles, was chosen by singular providence as their prince, and as the conspicuous center and bond of that very unity; upon whom the Church was built, and to whom the supreme care and authority was given to feed the whole flock, to confirm the brethren, and to bind and loose throughout the whole world, an authority to be transmitted to his successors through all ages. This is the Catholic dogma, which, received from the mouth of Christ, has been handed down and defended by the perennial preaching of the Fathers, and has been most sacredly preserved by the entire Church throughout all ages, and has been more frequently confirmed by the decrees of the Supreme Pontiffs and Councils against the errors of the innovators. Therefore, only that Church is truly Catholic which adheres in faith and communion with the See of the Roman Pontiffs, the successors of Peter; which, for this reason, Saint Cyprian calls the root and mother of the Catholic Church (2); which the Fathers and Councils, by a term of art, designate by the name of the Apostolic See; from which the priestly unity has arisen (3) and from which all the rights of the venerable communion flow (4); in which Peter constantly lives and presides, and provides for those who seek the truth of faith (5). Certainly, Saint Augustine, in order to bring back the Donatists, who were convicted of schism, to the root and the vine from which they had departed, used the argument frequently employed by the older Fathers:

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"Come, brothers, if you wish to be grafted into the vine." It is a sorrow to see you so separated. Number the priests, either from the very See of Peter, or in that order of the Fathers, who succeeded to whom; behold, it is the rock upon which the gates of hell shall not prevail (6). This alone sufficiently shows that in the Catholic Church, there is no one who is not attached to that Rock, upon which the foundation of Catholic unity is laid. And Saint Jerome felt no differently, for he considered profane whoever did not find consolation in communion with the Chair of Peter and the Pontiff sitting in it: "No one is a leader," (thus he wrote to Damasus), "except he who follows Christ, and is associated with you in your blessedness, that is, in communion with the Chair of Peter;" for upon that rock the Church is built. Saint Jerome, *Liber adversus Iovinianum*, n. 26. & 2) *Epistola IV ad Cornelium*, apud Constantinum, num. 3. (3) Saint Cyprian, *Epistola XII ad Cornelium*, apud Constantinum, num. 14. (4) *Epistola Concilii Aquileiensis ad Gratianum*, *imp. an. 381*, inter epist. s. A Muros. (5) Saint Peter Chrysologus, *Epistola ad Eutychium*, *Acta III Concilii Ephesini*, apud Harduin, I, 1478. (6) Psalm, in part. Donati.

[*Latin ed. p. 666*]

§ 666 ON CATHOLIC UNITY. "I know thy works, and thy charity, and thy faith, and thy service, and thy patience; but thou hast left thy first love." Whoever eats the lamb outside this house is a profane person. If anyone is not in the Ark of Noah, he will perish when the flood comes. Whoever does not gather with you is scattering; that is, whoever is not of Christ is of Antichrist (1). Thus, St. Optatus of Mileve, who celebrates that singular chair, known to all, established at Rome, declares that unity must be so preserved by all, that whoever places another chair against that singular chair is a schismatic and a heretic (2). And indeed, as St. Irenaeus openly declares to all, through the ordination and succession of the Roman Pontiffs, those things which were handed down by the Apostles in the Church reach us; and this is the fullest proof that the same vivifying faith is that which has been preserved and handed down in truth in the Church from the Apostles until now (3). "Therefore, if it is proper and perpetual for the true Church of Christ to be contained, to flourish, and to be manifested to all men at all times in social unity of faith and charity, like a city set on a hill; and if, on the other hand, Christ willed that Apostolic See of Peter to be the origin, center, and bond of that same unity, it follows that any group entirely separated from the external and visible communion and obedience of the Roman Pontiff cannot be the Church of Christ, nor can it belong in any way to the Church of Christ, that is, to that Church which is proposed to be believed in the Creed after the commendation of the Trinity: the holy Church, the one Church, the true Church, the Catholic Church (4); which is called Catholic not only by its own members, but also by all its enemies (5), and thus it has obtained the very name of Catholic, so that when any heretic

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wishes to call himself Catholic, if a pilgrim should ask where the Catholic Church is to be found, no heretic would dare to point to his own basilica or house (6); through which Christ bestows the benefits of redemption, as if through a body most intimately united with Himself, and whoever is separated from it, however commendable his life may be (1) Epist. 14, also 51, to Damasus, no. 2. (2) De Schism. Donatist. book II, no. 2. (3) Book III, against the heretics, chapter 3, no. 3, from the older interpretation. (4) St. Augustine, de Symb. ad catech. chapter VI. (5) St. Augustine, de vera Relig. chapter VII. (6) St. Augustine, contra epist. fundam. chapter IV, no. 5.

[*Latin ed. p. 667*]

ON CATHOLIC UNITY. 667 "Indeed, this very sin, which separates from the unity of Christ, 'hath not life in it, but the wrath of God abideth in him' (1): therefore, such groups can in no way rightfully claim the name 'Catholic,' nor can they be considered as such in deed, without manifest heresy. Hence, most honorable and most beloved Lords, you will understand why this Holy Congregation takes such care to prevent the faithful from being drawn into a society recently established by you, which, as you say, aims to promote Christianity, or in any way to favor it. You will also understand that any attempt to restore concord will necessarily fail unless it is based on those principles by which the Church was established by Christ and subsequently spread throughout the entire world by the Apostles and their successors; and which are clearly explained in the most celebrated Formula of Hormisdas, which it is certain that the entire Catholic Church has approved (2). Finally, you will understand that that ecumenical communion, which you mention, flourished before the Photian schism, because the Eastern churches had not yet withdrawn from the due obedience to the Apostolic See; and that it is not enough to lay aside animosities and hatreds towards the Roman Church to restore this most desirable communion; but rather, according to the command and institution of Christ, it is necessary to embrace the faith and communion of the Roman Church; as the venerable Bede, the most splendid ornament of your nation, says: 'Whoever separates himself in any way from the unity of faith or from the society of that [blessed Peter], such a one cannot be freed from the bonds of sin, nor can he enter the gates of heaven' (3).' Oh, that you, most honorable and most beloved Lords, since the Catholic Church has been shown to be one, and not to be divided or split (4), would no longer hesitate, but would embrace within its bosom that Church, which, until now, has obtained the authority of Cattolica from the Apostolic See through the succession of bishops, while heretics clamor around it in vain.

(1) S. Aug. ep. 141, al. 152, n. o.

(2) Hom. in nat. SS. Petri et Pauli.

(3) S. Cypr. ep. VIII. ad Corn. ap. Coustant. num. 2.

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(4) S. Aug. de util. credendi c. XVII, n. 35.

[*Latin ed. p. 668*]

668 ON CATHOLIC UNITY. The Holy Father, desiring to complete and perfect this work without delay, deigns to address you, together with this sacred Congregation, with all his heart, and by the grace of God, the God of mercy and light. The most holy Pope Pius IX earnestly implores you, that you may, finally, fleeing from the inheritance of division, merit to enter into the inheritance of Christ, into the true Catholic Church, to which your ancestors certainly aspired before the lamentable separation of the sixteenth century, and that you may take root in charity, in the bond of peace, and in the society of unity (1). "Vaux." Rome, this 8th day of November, 1865. C. Card. PATRIZI. From the documents: I. Just as the Apostolic See of Peter rejoices when it knows that those who have strayed from the right path and have abandoned their mother desire to return to her bosom, so it is compelled with sorrow to reject those who do not seek true and real Catholic unity. 15. For the Catholic Church cannot be other than that which is built upon one Peter, which rises as a united body, closely connected by the bond of faith and charity (2). (1) St. Aug. epistle 61, al. 223, no. 2, p. 69, al. 238, no. i. (?) While non-Catholics from the Anglican clergy seek a certain reunion with Christianity, which inquiry, if made with a sincere heart and without deceit, as they themselves say, will easily lead them to true Catholic unity through the action of divine grace, as evidenced by the shining example of many men of keen intellect who, with generosity, have happily returned to Catholic unity; thus, Catholics who are found at the present time to possess this unity, make it even closer, and hold it forth most brilliantly to all. This occasion has been presented by the need, in temporal matters, which presses upon the Roman Pontiff, the Successor of Blessed Peter, for it has been discovered that impious men are striving to reduce the Roman Pontiff to indigence in temporal matters, so that his supreme power may be diminished, and with him, the Church itself may be fully diminished; they have spared nothing in order to achieve their preconceived end. But Catholics from all parts of the world have spontaneously offered generous financial contributions to support their own Father, in order to alleviate the needs of the common Father: which is a splendid display of obedience of Catholics to the Apostolic See of Peter. But when the efforts of impious men did not come to an end, and they rejoiced to see the Pontiff stripped of all temporal possessions, there were not lacking families from almost all parts of Europe who sent their most distinguished sons to the Roman Pontiff, in order that...

[*Latin ed. p. 669*]

OF CATHOLIC UNITY. 669 III. Such a connected and united body is perpetually "the true property of the Church of Christ the Lord, and the

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most splendid mark by which the Church itself is safely and easily distinguished from all sects." IV. Whatever unity does not draw its strength from Peter, living perpetually in his Successors, and which does not arise in unity of faith and charity, or communion, ought rather to be called a mockery of Catholic unity, than true Catholic unity. Under its banner, they fought until the shedding of blood, and contended in the "defense of rights." In addition to the spontaneous tribute offered to the Supreme Pontiff, which has begun and continues to increase for many years, a solemn tribute is added. These days, we see the Roman Pontiff surrounded by a magnificent crown of a large number of Holy Priests, all of whom, at the simple invitation of the same Pontiff, come from the farthest parts of the world, both East and West, without regard for expense, labor, or health, almost rushing to Rome; and we see countless numbers of the Catholic clergy and faithful people rushing with no less joy, to venerate the See and Successor of the Prince of the Apostles in a solemn and centennial commemoration of his martyrdom. Among so many and such sincere expressions of devotion that Catholics offer to the Chair of Peter, there remains another noble tribute that Catholics offer these days, which, although not placed in temporal matters, can nevertheless be understood universally. It consists of the obedience of intellect and will by which effective action is achieved: namely, Catholics promise a special vow to profess and defend the Catholic doctrine, even if it has not yet been particularly defined by the teaching authority of the Church, and to act in accordance with it, even to the shedding of blood if necessary, which can be conceived in these words: When the Roman Pontiff, using his authority as universal Magister, or, as they say, *EX CATHEDRA*, decrees something that must be believed in matters of faith and morals, it is infallible; therefore, his dogmatic decrees are irreformable, and obligate the conscience even before the consent of the Church. This tribute to the Apostolic See has been proposed by those most illustrious men of the S.I., who write the well-known Roman periodical entitled: *La Civiltà Cattolica*, in a recent issue, number 414. This particular zeal of Catholics to profess and defend Catholic truths, taking into account the circumstances of the times and the attitude of the enemies, has been deemed and found to be very useful in opposing the enemies of the Church, as ecclesiastical history testifies. How much all these tributes contribute to illustrating Catholic unity, and what good things are to be expected from this united and brilliant body, which shows the Church of Christ the Lord in its fullest life, no one can fail to see.

[*Latin ed. p. 670*]

670 CONCERNING THE POWER TO GRANT DISPENSATIONS IN MIXED MARRIAGES, section IV. On November 22, 1865, the Bishop of Southwark consulted the Holy See regarding the following four points.

1. In the second formula (the Latin words are quoted), it is stated that

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the Bishop who has been granted these powers by the Pontiff may in no way use them outside the boundaries of his diocese. But, otherwise, the Holy See often grants powers which are not subject to this limitation, for example, the power to grant dispensations in mixed marriages. "It seems to me," (says the Bishop) "that whenever the Holy Father grants a certain power to anyone, this limitation is implicitly added; so that I cannot grant, by dispensation, to two persons subject to the Diocese of Southwark, who happen to reside in Plymouth, permission for them to enter into a mixed marriage there." I beg you, Holy Father, to declare whether this opinion is correct: that whenever an Indult contains the words "in no way to use," this should always be understood in the same sense.

2. It frequently happens that a man or a woman, being subject to some impediment or obstacle, regarding which we have been granted the power to grant dispensations, for example, in Liverpool, wishes to enter into marriage there with someone else who resides there. I wish to know whether I can directly grant this person, who is leaving my diocese, a dispensation from all impediments, and thus remove the impediment, and send them to Liverpool, where the other party is residing, so that they may enter into marriage there.

3. If two persons, who are subject to my diocese, and who are related by blood or affinity, and who are free from all impediments, wish to go to Liverpool to enter into marriage there, I ask whether I can use the Apostolic Indult for the marriage, which will take place outside the boundaries of my diocese, allowing it.

4. When granting dispensations for mixed marriages, the Church allows a Catholic man or woman to marry an Anglican woman or man (in...

[*Latin ed. p. 671*]

67. Those to whom the benefits of the Church do not directly pertain are accustomed to be permitted to enter into marriage; by what Bishop is a dispensation granted when a Catholic or a Catholica comes to enter into marriage outside of his or her diocese? ON THE FACULTY OF GRANTING DISPENSATIONS IN MIXED MARRIAGES. February 4th, 1865. "In the general Congregation of the Sacred and Universal Inquisition, held in the Convent of Santa Maria sopra Minerva, the Most Eminent Cardinals, as Inquisitors General throughout the Christian Republic, responded as follows." To the first clause, "in no way may it be used outside the boundaries of his diocese," it should be understood that the faculties included under that clause may be exercised only with those subjects actually existing in the diocese to whom the grace is granted. However, that same clause is not to be understood to apply to faculties granted to Bishops by the Apostolic See, unless it has been expressly stated or it can be otherwise determined that this was the intention of the Supreme Pontiff, or unless the subject matter itself requires it. The faculty of granting a dispensation concerning

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the impediment of mixed religion is granted with the clause, "that he may dispense within the boundaries of his diocese"; therefore, it cannot be exercised except with subjects actually existing within the boundaries of his own diocese, otherwise, as is stated in the response to the fourth. To the second and third. Affirmative, unless the tenor of the Apostolic concession prevents it, provided that permission for the celebration of the marriage has been obtained from the local Bishop where the marriage is contracted. To the fourth. Catholic men or women may be dispensed from the impediment of mixed religion by a Bishop who has the faculty, of whom they are subjects, due to their domicile or quasi-domicile acquired in his diocese, provided that they are actually present in that diocese when the dispensation is received; the dispensation thus obtained may be carried out wherever mixed marriages are permitted, unless something else prevents it according to the judgment of the Ordinary in the place where the marriage is contracted; otherwise, recourse must be had to the Apostolic See for the dispensation." Signed: ANGELUS ARGENTI, Notary of the Roman and Universal Inquisition.

[*Latin ed. p. 672*]

672 CONCERNING THE DISPENSATION REGARDING MIXED MARRIAGES ENTERED INTO WITH ITALIANS. On the 30th of August (865). "Most Reverend and Reverend Lord, DECREE. It has been reported to the Apostolic See that the following abuse has occurred: namely, that Italians who travel to foreign dioceses and reside there obtain dispensations regarding the impediment of mixed religion. Therefore, so that such a thing may never be instituted in the future, Our Most Holy Lord Pope Pius IX, with the advice of the Most Eminent Fathers General Inquisitors, has decreed in the Lord that all and each Bishops, who are empowered to grant dispensations regarding said impediment, shall, in its use, exclude Italians, concerning whom it is not certain that they have completely abandoned their Italian domicile." In the meantime, I pray to God that He may keep you long and safe. From the offices of the Holy Congregation for the Propagation of the Faith, on the 30th of August, 1865. With the utmost readiness to serve Your Eminence, A. Cardinal BARNABÒ, Prefect. H. CAPALTI, Secretary. To the Most Reverend Archbishop of Dublin.

[*Latin ed. p. 673*]

673 CONCERNING CASES RESERVED TO THE SUPREME PONTIFF. Thursday, June 27, 1866. DECREE. "The Most Holy Pope Pius IX, during a customary audience granted to the Reverend Fathers, Assessors of the Sacred Congregation, after hearing the votes of the Most Eminent Cardinals, Inquisitors General, and considering the circumstances of the times, decreed that the faculties, by which Bishops and other Ordinary pastors possess, to absolve from all cases reserved to the Holy See, should always

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be understood to exclude those cases reserved in the Bull of Benedict XIV, which begins: *Sacramentum poenitentiae*. And He willed that the Sacred Congregation for the Propagation of the Faith be instructed to add, after the words: 'to absolve from all cases reserved to the Apostolic See, as stated in the Bull *Coenae*,' the following: 'except those cases reserved in the Bull of Benedict XIV, which begins *Sacramentum Poenitentiae*.' Note. The cases reserved in the aforementioned Bull of Benedict XIV, dated June 1, 1741, are: a) The absolution granted by a priest to a person complicit in a scandalous matter; b) The absolution granted to a person of either sex, who falsely denounces a priest of solicitation.

ON THE USE OF ETHICAL BOOKS IN TEACHING HUMANITIES. February 15, 1867. "Illustrious and Reverend Lord, as a brother. – From your letter of November 23 of the past year, which you sent to me, the Most Eminent Cardinals, together with myself, Prefect of the Sacred Congregation, have greatly understood that grave dissensions have arisen and are still occurring in this diocese, especially among ecclesiastical men, because in teaching the humanities, both in the diocesan seminary and in other institutions for boys and young men..."

[*Latin ed. p. 674*]

674 ON THE USE AND ON THE INHUMAN TREATMENT OF BOOKS TO BE USED IN COLLEGES. Books written by non-Catholic authors, even if corrected, are presented in colleges entrusted to your vigilance and authority. Indeed, it is not surprising that those who consider such books worthy of study are greatly concerned and anxious about this matter. For it has been explored and confirmed by ancient and constant custom that young men, even clerics, can, without any danger, learn the elegant and eloquent style of speaking and writing, either from the most wise works of the Saints, or from the most distinguished non-Catholic writers, purged of all impurity. This is not only tolerated by the Church, but is entirely permitted, and it has been clearly declared by Our Most Holy Father Pope Pius IX in an encyclical letter addressed to the Bishops of Gaul on March 21, 1853. Therefore, since the ancient books written by non-Catholics, either in Greek or Latin, which are used in these seminaries and colleges, are not those that treat, narrate, or teach lascivious or obscene things, but are, in fact, most carefully purged of all impurity, as you yourself readily attest, there is nothing that can legally be objected to in the use of such books. However, it is most regrettable that, for this reason, the harmony among these clerics has been disturbed, and that the minds of many have been greatly agitated: because, if always, now certainly Catholic men, especially ecclesiastics, ought to devote all their effort and industry, not to engaging in and fostering harmful controversies, but to defending the Catholic truth and the rights of the Holy Church, which are so often attacked. Therefore, this Holy Congregation earnestly exhorts you in the Lord, that you may

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urge these ecclesiastical men with no less zeal than with pastoral charity to say all the same things, and to be perfectly united in spirit and in the same judgment; and that, abhorring all vanity of questions, they may diligently and zealously attend to the work of God and their neighbors. There is no doubt that, given your prudence, you will never cease to perform this salutary office: and in the meantime, I pray God for all good things and happiness for you. Rome, February 15, 1867. Most devoted to your Eminence, as a brother, C. CARD. PATRIZI. To the Most Reverend and Reverend Monsignor, Apostolic Administrator of the Diocese of Cattolica.

[*Latin ed. p. 675*]

G78 FROM THE APOSTOLIC PENITENTIARY. The following documents, having been compared with the authentic exemplar existing in the Sacred Penitentiary by special authority, are of this tenor. Doubts proposed to the Sacred Penitentiary, and answers given by the same Sacred Penitentiary on December 1, 1866. 1. Q. How ought one to respond to someone who asks, whether the office of deputy to the Parliament (1) can be accepted? A. Affirmatively, under the following conditions. 1. That elected deputies, when taking the oath of fidelity and obedience prescribed by law, add the limitation: "saving the divine and ecclesiastical laws." 2. That such limitation be expressly stated in the recitation of the formula of the oath itself, in the presence of at least two witnesses. 3. That the elected deputies themselves be of like mind, and declare that they will never favor or support unjust and wicked laws; indeed, that they will openly condemn such laws, as far as they are proposed. 2. Q. How ought bishops to act who are requested to favor the election of good deputies (2)? A. Nothing prevents bishops, and ordinaries, on the occasion of elections, whenever they are requested to do so, from bringing to the minds of the people, that each and every faithful person, according to their abilities, should strive to prevent evil and promote good. Doubts proposed to the Sacred Penitentiary, and answers given by the same Sacred Penitentiary on December 14, 1866. 1. Q. Can the bishop, upon entering the diocese, make a visit to the constituted authorities of the province (3)?

(1) How should one answer, if asked whether the office of deputy in the national assembly, which is called the Italian Parliament, can be accepted?

(2) In what manner can bishops act who are asked to favor the election of good deputies?

(3) Can a bishop, upon first entering the diocese, visit the constituted presidents of the province?

[*Latin ed. p. 676*]

676 FROM THE APOSTOLIC PENITENTIARY. Q. Can the duties of civility be fulfilled? A. Yes. Q. Can the Bishop be required to take an oath? At least, what obedience can he promise to the new order of things? (1) A. No;

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firstly, because it is forbidden by the Holy Canons for Ecclesiastical persons to make oaths before secular authorities; secondly, because the oath, as proposed, is illicit, as is evident from the response in the documents of December 10, 1860, under number 14. Q. After returning to his Diocese, can the Bishop communicate with all constituted authorities, and with the Mayors, who at this time write officially to the Bishops? (2) A. The matter must be judged in particular cases, considering the object and purpose, with the sacred dignity of the Bishop, and the necessity and unity of the Church, kept before one's eyes. Q. Can the Bishop, or other members of the clergy, participate in the singing of the Te Deum for political reasons, having already the Holy Penitentiary declared it lawful to sing the Te Deum after the Venetian War? (3) A. As explained, it is not permitted, according to several responses from the Holy Penitentiary, and from the documents of December 10, 1860, under number 1. Nor does the response given by the same Holy Penitentiary concerning the cessation of the war, in which it was declared lawful to sing the hymn Te Deum, apply, provided that, namely, the Hymn Ambrosian is sung solely for the purpose of giving thanks to God for the cessation of the war, and this purpose is publicly known, and only the common verses are recited, and the single prayer for giving thanks, omitting any other verse or prayer. S.D. How should one act in the face of the claims that the Government makes against the Seminaries? And if these have already been dissolved, can the Bishop appeal to the Government, and correspond with it, in order to at least open a boarding school in the manner of that of Mondovì? Can the Masters of the Seminary...?

[*Latin ed. p. 677*]

FROM THE HOLY PENITENTIARY. 677. Should one appeal to the Government, in order to be recognized as a public professor (1)? A. Sufficient provision has been made in previous instructions concerning seminaries. As for establishing convents, the Holy Penitentiary deems it advisable, whenever the discipline of morals and studies depends on the Bishop. However, nothing prevents the Bishop, either directly or through intermediaries, from taking action with the civil authorities to reclaim and restore seminaries, and to establish convents. Likewise, nothing prevents the teachers of seminaries, as private individuals, from appealing to the civil authority for permission to teach a particular art or science.

6. Q. What conduct should the Bishop observe in the face of the occupation and sale of ecclesiastical property; while speaking may be of grave danger, and silence may be taken as an indication of approval? And how should one proceed regarding the requests made by the Government for the titles of the same property, under threat of seizure? Furthermore, can the Bishop send circulars to the parish priests and other beneficiaries, which he receives on this matter from the Government itself (2)?

A. One must either remain silent or speak, as prudence and the expected

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outcome dictate. However, titles violently demanded can, in a case of necessity and to avoid serious damage, be presented; provided, however, with a prior declaration in which it is stated that one is yielding to coercion, and is not thereby cooperating with the wicked intentions of the Government. Similarly, the Bishop can inform the parish priests and other beneficiaries, especially through intermediaries, about such acts of violence by the Government.

(1) How should each Bishop behave in the face of demands made by a certain Government that are injurious to the institutions of seminaries? And when these demands have been eliminated and removed, can the Bishop turn to the Government and act, so that at least some kind of "convent," similar to that established at Monte Regale, may be opened? Furthermore, can the teachers of seminaries turn to the Government, in order to be considered as public professors?

(2) What method of action should the Bishop use in the invasion and sale of Church property: since speaking may be of grave danger, and silence may be taken as an indication of approval or assent? And in what way should the Bishop behave towards the Government when it demands the titles of the same property, and threatens seizure if he does not comply? Furthermore, can the Bishop send to the parish priests and to others who hold Church benefices, the encyclicals which he himself receives on this matter from the Government?

[*Latin ed. p. 678*]

678 FROM SAINT ALPHONSUS' PENITENTIAL MANUAL. Regarding the manner in which they should be instructed, so that they may benefit, with the aforementioned preliminary declaration, titles are required under severe penalties or damages.

7. D. According to the laws currently in force, Priests exercise civil offices, such as that of Mayor, by taking an oath, and as advisors of charity, etc. Can the Bishop tolerate such Priests in the exercise of their offices? (1)

R. According to the Holy Canons, it is not permitted for Clerics, without the legitimate permission of ecclesiastical authority, to assume and exercise civil or lay offices. The oath, as presented by the government, is illicit, and those who have taken it must be held to retract it. Regarding advisors of charity, provision is made in the Letters of December 10, 1860, under number 12. As for Clerics who are delinquent in the aforementioned matters, action should be taken as described below, in the ninth section.

8. D. The obligations of Masses, pious legacies, lay chaplaincies, etc., are currently administered exclusively by persons elected by the government, who also appoint chaplains to perform ecclesiastical duties in the churches. Can the Bishop tolerate this? (2)

R. Provided that those who are appointed or elected possess the neces-

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sary qualities, and the right of a third party is not violated, the Ordinary can tolerate them; and he can even, insofar as the institution requires it, confer upon them a chaplaincy or a legacy, without mentioning the illegitimate nomination or election that has been carried out.

9. D. Many Priests have laid aside their ecclesiastical garments, and some, favored by the current circumstances, turn a deaf ear to the voice and the injunctions of the Ordinary. What conduct should be adopted towards them? (3)

R. Having given the aforementioned warning, action should be taken as prudence dictates, according to the Holy Canons, against those who do not conform to the prescribed dress and demeanor.

[*Latin ed. p. 679*]

FROM THE APOSTOLIC PENITENTIARY.

It is stated: If the Ordinary has not heard the Congregation of the Holy Council, recourse must be had to number 10. The Prefects of Provinces have arrogated to themselves the power to determine which feasts should be celebrated with external pomp, and which processions may be held: can this be tolerated? Answer: Affirmative, with due caution, and always excluding those who are manifestly incompetent, and with new regulations.

11. Can the Masters of Seminaries obtain testimonial letters, in order to be recognized by the Government as public professors? Answer: Nothing prevents the Ordinary from granting testimonial letters to the Masters of Seminaries, by which their practice in teaching and their expertise in managing schools may generally be confirmed.

Rome, from the Holy Penitentiary, on the 20th of February, 1867.

A. C. PANERIANCO, P. L.

(1) The Prefects of Provinces have arrogated to themselves the right to determine which feast days should be celebrated with external pomp, and which processions may be held: can this be tolerated?

Peirano M., Secretary.

(2) Can testimonial letters be granted by the Bishop to the Masters of Seminaries, so that they may be recognized by the Government as public professors?

[*Latin ed. p. 680*]

680 FROM THE SECRETARY'S OFFICE, IN THE CITY, VICARIATE. CONCERNING THE CONFRATERNITY NAMED "SAINT PETER'S CHAINS." May 13, 1867. On February 26, in the year 1866, His Eminence, the Cardinal Vicar of Rome, issued a decree concerning the canonically

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erected Confraternity named "Saint Peter's Chains," which is as follows: "Constantine, by the Divine Mercy, Bishop of Porto and Saint Rufina, Cardinal of the Most Holy Patriarchal Basilica of the Lateran, Archpriest of the Most Holy Lord's Church, General Vicar of the Most Holy Father, Pope. DECREE. Those sacred Chains, by which the Prince of the Apostles, the Blessed Peter, was once bound by the perfidy of the wicked, imparted a certain divine power to them, and left behind, as a monument and pledge of the victory of faith and of the Church that shall endure forever, a public and solemn veneration, which is always observed throughout the Christian world; this is evident from the testimony of history, and from the very illustrious Basilica of Eudoxia, which is most magnificently built and celebrated. Now, seeing that, in these unjust times, nothing is spared, and we grieve that the freedom of the entire Church, and of its visible Head, is once again threatened, certain pious men, devoted to the Apostolic See, opportunely devised that they, professing themselves Catholics and children of the Roman Pontiff, should wear chains, most faithfully made in the form of those very sacred Chains, and that these, along with a small Cross, called the "Cross of Saint Peter," should be blessed under the auspices of the Apostles, and freely worn upon their garments, drawn through the Chains themselves. To signify this religious sign, signifying their unity of mind and purpose, they also wished to be bound together by a bond of fraternity, and for this purpose, having duly requested our ordinary authority, we erect this Society by the present Decree."

[*Latin ed. p. 681*]

CONCERNING THE CONFRATERNITY OF THE HOLY CHAINS OF SAINT PETER. 68. We establish under the name "CONFRATERNITY OF THE HOLY CHAINS OF SAINT PETER," whose members, wearing the aforementioned chains as a badge, shall diligently recite certain prayers daily, and shall likewise faithfully fulfill the customary visitations to the Holy Chains in the church or basilica of Eudoxia, and shall receive the Sacraments of Penance and the Eucharist whenever possible, on the designated days. Finally, we desire and confirm this Society, making it equal to other pious institutions, while reserving to Ourselves and Our Successors the right, as is proper, to dispose of whatever may be necessary concerning it and its Rule, and to arrange all matters according to the form of the Apostolic Constitution of Clement VIII, blessed memory. Given in Rome, from the halls of the Vicariate, on the Feast of February, in the year of Our Lord 1866. C. CARDINAL, VICARIUS. In places where such a Confraternity is spread abroad, the Most Holy Father, Our Lord, on April 14, 1866, enriched the same Confraternity, which He had already praised (1), with many indulgences, in a document in the form of a Brief, which is set forth below. However, in order to eliminate certain abuses that may arise, the Brothers have now obtained a Decree from the same Most Eminent Car-

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dinal Vicar, which we gladly bring to your attention. CONSTANTINE, BY THE MERCY OF GOD, ETC. DECREE. "In order to eliminate any abuses that may arise, even in matters of piety, especially if some hope of profit is involved, and if the instruments of piety themselves can become the subject of public or private commerce, it is fitting, in the Lord, that the rights and spiritual goods of the pious Society, or Confraternity of the Holy Chains of Saint Peter, which are the insignia of the Confraternity, be protected. The Holy Father, Our Lord, deigned to write the following to the Presidents of the Confraternity on December 1, 1863: "May God bless you and direct your hearts and your minds." Pius PP. IX. The same Presidents of the Confraternity, humbly presenting a program to the Most Holy Father, obtained this most precious Rescript, signed by the same Pontiff: "May it please God that the Prince of the Apostles may replace the chains with which so many enemies of the Church of Jesus Christ are bound, and may all be bound with these new chains of grace, of faith, of charity."

[*Latin ed. p. 682*]

682 D& CONFR. A VINCULIS S. PETRI. "Let those who wish to be enrolled, observe, that through the present Decree, We grant permission. Therefore, by virtue of the special faculty granted to Us by the Most Holy See for this purpose, We decree and ordain: No Rosaries, which are perhaps distributed by others, but not by this Society itself, and indeed properly, shall be considered as having legitimate approval; furthermore, the right to distribute these Rosaries undoubtedly belongs to this Society, according to Article III, § IV, of the Rules duly admitted and approved by Us on February 26, 1866 (I), and Indulgences for the recitation of these very Rosaries have been granted to this Fraternity, that is, to those who are members or constitute it, through Apostolic Letters issued in the form of a Brief on April 14 of the same year, 1866 (2). Therefore, in Article III, § 4 of the aforementioned Rules, it is stipulated: "Rosaries of this kind shall be distributed only by members of the Board of Directors, or by one to whom the Board has granted the power, according to legal form, in order to prevent the purchase of Rosaries and other abuses." (2) The following are the terms of the Letters in the form of a Brief: "PIUS PP. IX. For the Perpetual Remembrance of the Matter. Among the illustrious monuments of the Christian Religion, and as if trophies left in the Eternal City by the Blessed Peter, Prince of the Apostles, after he established there the Chair for himself as the first Vicar of Jesus Christ on earth and for his Successors, divinely instituted, are the iron chains with which he was bound, both in Jerusalem and in Rome. Indeed, great honor has been paid to these chains by the faithful from the very beginning of the Roman Church, and this honor has grown even greater since in that same City, a Church dedicated to Eudoxia, under the title of St. Peter in Chains, was built. And furthermore, the devotion to the Holy Chains has not diminished over time, but rather, in many faithful,

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it has increased more and more in recent years, as evidenced by their desire to join the Fraternity under the title of St. Peter in Chains. Since, as We have been informed, this Fraternity has now been canonically established in that Church, the humble and fervent prayers of its members have been presented to Us, so that We might deign to grant them the treasures of heavenly graces from the benevolence of the Apostolic See. We, confident in the mercy of Almighty God, and in the authority of the Blessed Peter and Paul, Apostles, grant to all Christians of both sexes who shall join this Fraternity in the future, on the first day of their entrance, if they have truly repented and confessed, a Plenary Indulgence; and also, to those members and associates of the aforementioned Fraternity, as they are described now and for the time being, who are truly repentant and have confessed, and who have received the Holy Communion, or, if they are unable to do so, at least who have devoutly invoked the name of Jesus, if they can, or, if not, with their hearts, also a Plenary Indulgence; and also, to the same members and associates of the aforementioned Fraternity who are now and for the time being truly repentant and have confessed, and who have received the Holy Communion, who visit the aforementioned Church of St. Peter in Chains on..."

[*Latin ed. p. 683*]

OF THE CONFRATERNITY NAMED "OF THE HOLY CHAINS OF ST. PETER." 68S. To no one shall it be permitted to sell the Holy Chains of St. Peter, except by order of the Confraternity; and those who acquire any profit from this shall be obligated to devote it to the construction of the Confession or the Trophies of the Holy Chains, for veneration, in the Eudoxian Basilica; as was intended and established by the founders of the Sodality, as indicated in the Prologue of the Rules. This sum of money shall be collected on the twenty-ninth day of June, which is the feast day of St. Peter, the Prince of the Apostles, and on the feast day of the Chair, on which he first sat in Rome, from sunrise to sunset for those days; and also on the principal feast day of the aforementioned Confraternity, once a year, by the Confraters themselves, by choosing one among them, and approved by our beloved son, the Vicar General in spiritual matters, in that city, or on one of the seven consecutive days immediately following, chosen by each Confrater, and there, for the concord of Christian princes and the eradication of heresies, and for the exaltation of the Holy Mother Church, they shall offer devout prayers to God. And on the day that the prelates perform these actions, we likewise, in the Lord, mercifully grant to all a plenary Indulgence and Remission of all their sins. Furthermore, to those Confraters and Consorors, who, with contrite hearts, visit the aforementioned Church on four annual feast days or Sundays, once a year, chosen by the aforementioned Confraters and approved as above, and pray there, on the day that they perform these actions, we grant seven years and seven

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quarantines. And whenever they attend Masses and other divine Offices celebrated in that church, or participate in processions, or carry the Most Holy Eucharist in processions, or to the sick, or in any other way and at any time, or if prevented, they ring the bells to signal this, and recite the Our Father and the Angelic Salutation once, or even five times the same prayers for the souls of deceased Confraters and Consorors, or perform any other work of piety and charity, for each of these actions performed, we remit sixty days of the penances prescribed to them, or any other penances owed, in the usual form of the Church. We also grant, in the Lord, that all these Indulgences, Remissions of sins, and relaxations of penances may also be applied for the benefit of the souls of the faithful who, joined to God in charity, have departed from this life. Moreover, since we desire, as much as we can in the Lord, to promote the spiritual well-being and consolation of all members of the aforementioned confraternity, we grant that those Confraters and Consorors of the same confraternity, already described or to be described, who reside outside the city and cannot visit the aforementioned church to obtain Indulgences, may freely and lawfully obtain all the Indulgences mentioned above, by visiting a public church or oratory dedicated to St. Peter the Apostle, if one exists, or, if not, the respective parish church, provided that they perform all the other acts of piety that are prescribed, and we grant and declare this, notwithstanding anything to the contrary. This shall be valid for all present and future times.

[*Latin ed. p. 684*]

684 CONCERNING THE CONFRATERNITY NAMED "FROM THE BONDS OF ST. PETER." We declare and define that the Confraternity, or those who administer it and carry out its functions, are obligated to render an account of their administration and expenditures to Us and to Our Successors. In witness whereof, etc. Given in Rome, from the offices of the Vicariate, on the 13th of May, 1867. C. Card. PATRIZI, in the place of the Sign of the Vincentian Order. Furthermore, We wish that if, after the aforementioned Confratres and Consorores have acted in accordance with the foregoing, any other Indulgence of a similar nature has been granted, either perpetually or for a duration not yet elapsed, that it be revoked, as We hereby revoke it by Our Apostolic Authority; and if the aforementioned Confraternity has already been aggregated to any Archiconfraternity, or in the future shall be aggregated, or united by any other means, or even established in any way, then all prior, and any other, Apostolic Letters shall be entirely invalid for it, "and from that time forward, shall be null and void." Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 14th of April, 1867, in the fifth year of Our Pontificate. L. t S. JN. Card.

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PARACCIUS, ICLABELLI.

[*Latin ed. p. 685*]

685 FROM THE CONSISTORY ACTS. CONSISTORY PROMOTIONS. The account follows of those vacant churches to which Bishops were appointed in the sacred Consistory held on March 27, 1867. In addition to the churches already mentioned on page 599, and following, the following were proposed by the Most Holy Father: THE CATHEDRAL CHURCH OF REGIO LEPIDI, vacant due to the death of the Most Reverend Bishop Peter Raffaeli, to which the Reverend Father Charles Macchi, of the Milan diocese, was promoted, who had previously been chosen as Bishop of Eremia in the Consistory of June 20, 1859, but had not yet received consecration, nor had he been able to take possession of that church. Reggio Lepidi, a beautiful city built in a fertile plain on the Via Emilia, has a circumference of nearly three miles and contains almost two thousand houses, inhabited by more than twenty thousand inhabitants. The Cathedral Church, dedicated to the most blessed Virgin Mary, Assumption, serves as a suffragan to the Archbishop of Modena. Its Chapter includes two dignities, the first of which, after the pontifical office, is the Archdeaconate, followed by eleven Canons, two of whom are endowed, four Mansionaries, nine Chaplains, and other priests and clerics serving in the divine ministry. Through the dignity of Archpriest, assisted by another priest, the care of souls is exercised in the Cathedral; the baptismal font is located in the nearby church of St. John the Baptist; and among the sacred relics, the bodies of the holy martyrs Chrysanthus and Daria, patrons of the city, are appropriately preserved, and outside the city there is a cemetery. Ten other parish churches are counted in the territory of Reggio, none of which have a baptismal font, and three of these are also Collegiate, with three monasteries of men and two of women, a hospice, several lay sodalities, a xenodochium, a pawnbroker's, and a seminary. The extent of the diocese extends to nearly one hundred miles, and encompasses many places. THE CATHEDRAL CHURCH OF IMOLA, vacant due to the death of the Reverend Monsignor Caietan, Cardinal Baluffi, to which the Reverend Father Vincent Moretti, formerly Bishop of Cesena, was transferred. Imola, a city of Emilia in Romagna, built on a plain near the Vatrenus River, has a circumference of nearly three miles and contains two thousand five hundred houses, inhabited by more than ten thousand citizens. The Cathedral Church, dedicated to the martyr St. Cassian, patron of the city, serves as a suffragan to the Archbishop of Bologna. Its Chapter includes nine dignities, the first of which, after the pontifical office, is the office of Prebend, followed by nine Canons, two of whom are endowed, six Beneficiaries, two additional members added by the munificence of the Holy Lord, and other priests and clerics serving in

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the divine ministry. Through one of the Canons...

[*Latin ed. p. 686*]

686. PROMOTIONS: The care of souls is exercised in the Cathedral, where there is a baptismal font, etc., and among the sacred relics are the bodies of Saint Cassia, martyr, and Saint Peter Chrysologus, Bishop and Doctor of the Church. Outside the city, there is a cemetery. Furthermore, there are nine parish churches under the jurisdiction of Forocornelii, two of which are equipped with baptismal fonts, three monasteries for men, two for women, a hospice, several sodalities, a new institution for girls in danger, founded by the generosity of Pope Pius IX, which was already established by the Imola Bishop, a hospital, a charitable foundation, and a seminary. The territory of the diocese extends to approximately fifty leagues and includes many places.

THE CATHEDRAL CHURCH OF COMACCHIO. This church, vacant due to the resignation of the Reverend Father Fidele Bufarini, was willingly and gladly transferred to the Most Holy Lord, and from that time, the Reverend Father Alexander Paulus Spoglia, formerly the Bishop of Ripà, was appointed as its pastor. Comacchio, or Comacula, is a city located between Romagna and Ferrara, near the Adriatic Sea, situated among marshes and on a plain, with a circumference of approximately four miles, containing about one thousand two hundred houses, and inhabited by approximately six thousand citizens. The Cathedral Church, dedicated to Saint Cassia, martyr, is a suffragan of the Archbishop of Ravenna. Its chapter includes two dignities, the first of which, after the pontifical office, is the Archpriestship, with eighteen canons, three mansionaries, and other priests and clerics serving in the divine ministry. The care of souls in the Cathedral is exercised by the Archpriest, assisted by three to four curates at his discretion, where there is a baptismal font, etc., and among the sacred relics, especially those of Saint Cassia, the patron saint of the city, are properly preserved.

There are no other parish churches or collegiate churches in Comacchio, but there is one monastery for men, some lay sodalities, a hospital, a charitable foundation, and a seminary. The territory of the diocese extends to approximately one hundred leagues and includes eleven places.

THE CATHEDRAL CHURCH OF ALEXANDRIA. This church, in the Piedmont region, became vacant due to the death of the Most Reverend Bishop Dionysius Andrea Pasio, and the Reverend Father James Anthony Colli, a priest from Casale Monferrato in the diocese of Novara, was appointed. He had commendably distinguished himself in sacred theology and in ecclesiastical duties; he was also co-opted among the ecclesiastical Superiors, and he served as Professor of ecclesiastical history in the theological seminary of Novara, and as Rector of other diocesan seminaries. He was elected as a canon in the Cathedral, and successively, he was honored with the first dignity of Archdeacon. Alexandria is a fortified town in

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the Piedmont region, located near the Tanaro River, built on a plain, with approximately four thousand houses, and inhabited by more than thirty thousand citizens. The Cathedral Church, formerly dedicated to Saint Mark the Evangelist, now boasts the title of Saint Peter, the prince of the Apostles, and is a suffragan of the Archbishop of Vercelli. Its chapter includes four dignities, the first of which, after the pontifical office, is the Archdeaconry, with ten canons, including a theologian and a penitentiary, several mansionaries, and other priests and clerics devoted to the divine service. The care of souls in the Cathedral is exercised by the Archpriest, assisted by a vice-parish priest, where there is a baptismal font, etc., and among the sacred relics, especially the body of Saint Brandolini, the Bishop and patron of the same city, and Saint Valeria, martyr, are properly preserved. A cemetery is located outside the city.

[*Latin ed. p. 687*]

687 CONSISTORY PROMOTIONS. Nine others are reported: a parish church in Alexandria equipped with a baptismal font, two of which are also collegiate churches; a monastery for men, two convents, several sodalities of laymen, a hospital, a charitable foundation, and a seminary. The diocese extends approximately thirty leagues and encompasses numerous locations.

THE CATHEDRAL CHURCH OF CUNEO. Vacant due to the death of the Right Reverend Bishop Clement Manzini, the Reverend Andrew Formica, a priest of the diocese of Alba, a Doctor of Sacred Theology who has admirably performed ecclesiastical duties, has been promoted to Archpriest-Parish Priest of Saint Michael in Cortemilia, and also to the position of Vicarius Foraneus for the surrounding areas; he has relinquished his position as Rector of the diocesan seminary, Prefect of Studies, and Lecturer in Moral Theology, and has been appointed Canon of that Cathedral, and has been granted the dignity of Archpriest with the attached spiritual care. Cuneo, a city in Piedmont, built in a pleasant location at the foot of the Alps, on the border of France, situated on the banks of the river Tanaro, has a circumference of approximately one and a half leagues, contains about three thousand houses, and is inhabited by nearly twelve thousand citizens. The Cathedral Church of the Purification of the Blessed Virgin Mary is a suffragan of the Archbishop of Turin. Its chapter includes three dignities: the Archdeacon, the Archpriest, and the Prefect, the first of whom is determined by the order of precedence after the pontifical office; it also includes eighteen Canons, with both theological and penitential duties, as well as other priests and clerics who serve in the divine ministry. The chapter has spiritual care, which is exercised through the first dignity in the Cathedral, where there is a baptismal font, etc., and there is a cemetery outside the city. Two other parish churches in Cuneo are equipped with baptismal fonts; there is a monastery for men

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and one for women; there are three sodalities of laymen, two hospitals, an orphanage, a charitable foundation, and a seminary. The diocese extends approximately thirty leagues and encompasses more than fifty parishes.

THE CATHEDRAL CHURCH OF ATRI. Vacant due to the death of the Right Reverend Bishop Camillo Benzon, the Reverend Peter Colli, a priest of the diocese of Atri, who has admirably performed ecclesiastical duties, and who was appointed Professor of Grammar, Humanities, and then Philosophy at the diocesan seminary, and also served as Prefect at the episcopal gymnasium, and as Chancellor in that curia, has been promoted to Canon of the Cathedral of Atri, and is currently serving as Vicarius Capitularis in that vacant position. Atri, a city in the province of Venice, located between the Po and the Adriatic Sea, and intersected by a river commonly called the "Canal Bianco," has a circumference of approximately two leagues, contains about one thousand five hundred houses, and is inhabited by nearly eleven thousand citizens. The Cathedral Church, a magnificent and beautifully constructed building in the Corinthian style, is dedicated to the holy Apostles Peter and Paul, and is a suffragan of the Patriarch of Venice. Its chapter includes the dignity of Archpriest, eleven Canons with both duties, six Beneficiaries, as well as other priests and clerics who dedicate themselves to divine works. The chapter has spiritual care, which is exercised by the Archpriest in the Cathedral, where there is a baptismal font, etc., and there is a cemetery outside the city. In addition to the Cathedral, there is another parish church in Atri equipped with a baptismal font, and three chapels.

[*Latin ed. p. 688*]

§ 88 PROMOTIONS: The perpetual hospice, a lay sodality, a hospital, the Episcopal gymnasium, and the Rodigium seminary with its students; a mountain of piety is desired. The diocese encompasses a very wide area, including many places. THE CATHEDRAL CHURCH OF LAURIUM: It is vacant due to the translation of the Reverend Father John Simor to the Metropolitan See of Strigonium; to which the Reverend John Zalka, a priest of the Laurium diocese, was promoted by the grace of the Most Holy Lord, at the nomination of His Most Holy Majesty, Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary. The same was promoted to the degree of Doctor of Sacred Theology, and he has commendably exercised himself in the care of souls; he has been Rector of the Strigonium seminary, and there he was elected Professor of ecclesiastical history and canon law, he has served as a Synodal Examiner, Archdiocesan Censor, and as a theological assistant director; he is currently a theologian canon in the metropolitan church, and he has renounced that position, and he has been appointed, for honor, among the secret chaplains of the Most Holy Lord, and among the supernumerary members of the secret chamber. Laurium is a free royal city of Hungary, located in the county of the same

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name, built on a pleasant plain near the river Arba, and it contains two thousand houses, and is inhabited by more than sixteen thousand Catholics under the temporary dominion of the same Most Serene Emperor and King. The cathedral church, recently restored internally to all its splendor, is dedicated to the Virgin Mary, assumed into heaven, and it is a suffragan of the Archbishop of Strigonium. Its chapter consists of fourteen canons, with a theological prebend, and includes four royal prebends, of which two are held by royal officials, seven archdeacons, and four dignitaries, the first of whom, after the pontifical, is the Major Prebend; there are also six honorary canons, and several other priests and clerics who serve in the divine ministry. The care of souls in the cathedral is exercised by a canon-parish priest, assisted by two curates, where there is a baptismal font, etc., and among the relics of the saints, the skull of Saint Ladislaus, King of Hungary, is religiously preserved. There are three other parish churches in the Laurium diocese, each with a baptismal font, two for men and two for women, a monastery, some lay sodalities, four hospitals, a large and a small seminary, and Sopron has a collegiate church; but a mountain of piety is desired. The area of the diocese extends through four counties and includes two hundred and thirty parishes. THE CHURCH OF JULIA CAESAREA, or ALGERIA: It was elevated to the honor of a metropolitan church by Apostolic Letters entitled "Author of the Catholic Church," dated August 8, 1866, and it is vacant due to the death of the Most Reverend Antistite Louis Pary, to which the Reverend Father Charles Martial Allemand Lavigerie, formerly Bishop of Nancy and Toul, was translated by the grace of the Most Holy Lord, at the nomination of the Most Serene Emperor of the French. Julia Caesarea, or Algiers, is a large and beautiful city of Africa and the capital of the French colony, built on the shore of the Mediterranean and at the foot of the mountains, and it contains more than sixty thousand inhabitants, of whom almost half profess the Catholic religion under the temporary French dominion. The cathedral church, of a sufficiently large size and with a recent structure, and dedicated to Saint Philip the Apostle, was elevated to the metropolitan rank by the aforementioned Apostolic Letters, and it is supported by the Bishops of Constantina and Oran. Its chapter, according to the aforementioned Apostolic Letters, is to be equated with the other metropolitan chapters of France, and its number of beneficiaries is to be increased; it currently numbers eight canons, as before.

[*Latin ed. p. 689*]

PROMOTIONS are made to those who attain the dignity of Parish Priest, first and after the pontifical office; from among these, two shall bear the title of dignity, and two others shall be designated as Theologians and Penitentiaries. Furthermore, there are several honorary Canons, and on feast days, students from the major seminary also serve in the divine services. Four Vicars assist the Dean in the pastoral care of souls in this metropolitan

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area, where there is a baptismal font and relics of the saints. The Bishop and Doctor Augustine is devoutly venerated, and outside the city there is a cemetery. In addition to the metropolitan church, there are four other parish churches, all equipped with baptismal fonts, some for men, and others for religious houses, with sisters of charity of St. Vincent de Paul serving in a hospital, a house of the Most Sacred Heart for the education of girls, the Society of the Good Shepherd, an orphanage in the suburbs, several lay sodalities, and a large and small seminary; however, a house of piety is lacking. The territory of the archdiocese encompasses the entire Algerian province, and includes several other locations.

The CHURCH OF CONSTANTINE, elevated to the status of a cathedral by Apostolic Letters entitled "Clementissimus Deus" dated August 8, 1866, and vacant since its initial establishment, has been assigned to the Reverend Felix de Las Cases, a priest of the Albiensis Archdiocese, through the benevolence of the Most Holy Lord, at the nomination of the Most Serene Emperor of the French. This man, promoted to ecclesiastical functions, has demonstrated great aptitude; he was formerly chosen as the General Vicar for the Petrocoricensi diocese, and as the Supreme Moderator for the nuns of the Good Shepherd in the Andegavensi diocese, and has until now performed the duties of Parish Priest at the church of the Blessed Virgin Mary in Audegav.

Constantine, a city in North Africa, located near the Ampsaga River on a mountain peak, is quite large and beautiful, surrounded by walls, and inhabited by approximately fifteen thousand people under temporary French rule. The parish church, well-decorated, spacious, and of modern construction, is dedicated to the Blessed Virgin Mary, Sorrowful, and has been elevated to the status of a cathedral by the aforementioned Apostolic Letters, retaining its ancient title and parochial status. It is a suffragan of the Archbishop of Caesarea. Its chapter, with regard to the number of canons, is to be established according to the norms of other chapters existing in Gallia, as stated in the aforementioned Apostolic Letters: two of the Canons shall hold positions of dignity, namely the Proposit, who holds the first dignity after the pontifical office, and the Archdeacon, and two others shall be designated as Theologian and Penitentiary; however, due to a lack of priests, it currently consists of only three Canons, among whom the Proposit is counted. With the assistance of a Parish Priest, the pastoral care of souls will be exercised in the cathedral, where there is a baptismal font and a sacristy sufficiently equipped with sacred furnishings for the performance of divine worship. The deficiencies of the episcopal palace will be addressed by the French government. The assessed taxes are recorded in the Florentine Chamber books at 170. No other parish church is found in the city of Constantine, but there are the Brothers of the Christian School and the Sisters of Charity for the instruction of boys and girls and the care of the sick; a seminary is also to be established, and in

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the meantime, students from the diocese will be educated in the seminary in Algeria. The territory of the diocese encompasses the entire province of Constantine and includes several other locations.

The CATHEDRAL CHURCH OF RUPELLE, vacant due to the transfer of the Reverend Father John Baptist Annae Landriot to the metropolitan see of Rhemensem; to which 45...

[*Latin ed. p. 690*]

PROMOTIONS BY CONSISTORY. 690. The Reverend Benedict Leo Thomas, a priest of the Augustodunum diocese, was promoted by the benevolence of the Holy Father, at the nomination of the Most Serene Emperor of the Gauls. The same Reverend was awarded the doctorate in sacred theology by the Roman University, and has diligently applied himself to ecclesiastical functions, having served as Vicar of the Cathedral parish of Augustodunum, as Prefect of the priests of his diocese dedicated to sacred missions, and having been chosen as Provisor, he fulfilled the office of General Vicar for many years, until the present time. The city of Rupella, located in Gaul in the province of Lower Poitou, on the coast of the Aquitanian Sea, contains approximately fifteen thousand inhabitants. The Cathedral Church, sufficiently large and decorated, is dedicated to Saint Louis and serves as a suffragan to the Archbishop of Burdigala. Its chapter consists of nine canons, including a theologian and a penitentiary, as well as several honorary canons, other priests, and choir boys, to which are added seminarians for divine service on feast days. The care of souls in the Cathedral is exercised by the Archpriest, assisted by some vicars, and there is a baptismal font, etc. Outside the city, there is a cemetery. Four other parish churches are located in Rupella, all equipped with baptismal fonts; there are also several religious houses for men and women, some lay sodalities, two hospitals, a charitable institution, and a large seminary, as well as a smaller one in the diocese. The diocese encompasses the entire province of Lower Poitou, comprising approximately five hundred thousand souls, and includes several other locations. THE METROPOLITAN CHURCH OF RHEMS, which became vacant upon the death of the Reverend Thomas, a Cardinal Priest of the Holy Roman Church, Gousset, to which the Reverend Father John Baptist Anne Laudriot, formerly the Bishop of Rupella, was transferred, by the benevolence of the Holy Father, at the nomination of the Most Serene Emperor of the Gauls. Rhems, or Durocortorum, is a large, elegant, and cultured city in Gaul, located in the province of Matrona and built on a plain. It is inhabited by over fifty thousand people. The Metropolitan Church, with its spacious and magnificent Gothic structure, is dedicated to the Blessed Virgin Mary, and four other churches serve as suffragans to it. Its chapter consists of ten canons, including a theologian and a penitentiary, as well as several honorary canons, other priests, and choir

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boys who serve in divine worship. The chapter provides for the habitual care of souls, which is exercised in the Metropolitan Church by one of the canons, where there is a baptismal font, etc. In addition to the Metropolitan Church, there are five other parish churches in Rhems, all equipped with baptismal fonts, as well as several religious houses for men and women, some lay sodalities, two hospitals, a charitable institution, a large seminary, and a smaller one. The territory of the Archdiocese extends approximately thirty leagues in length and fifteen leagues in width, encompassing approximately five hundred thousand souls and several other locations. THE CATHEDRAL CHURCH OF VIBDU-NEN, which became vacant upon the death of the Reverend Bishop Louis Rossat, to which the Reverend Augustine Hacquard, a priest of the Saint-Deodat diocese, was promoted by the benevolence of the Holy Father, at the nomination of the Most Serene Emperor of the Gauls. The same Reverend, having been promoted to the parish of Versailles, assisted there as General Vicar in spiritual matters, and having fulfilled the office of parish priest of Symphonia in Versailles for many years until the present time. Virodunum, or Yerodunum, is a large city in Gaul, located in the province of Moselle, built on the banks of the river of the same name and at the foot of the mountains, and enjoys a healthy climate.

[*Latin ed. p. 691*]

PROMOTIONS and it is inhabited by more than twelve thousand souls under temporary French dominion. The Cathedral Church, dedicated to the Blessed Virgin Mary, serves as a suffragan to the Archbishop of Besançon. Its chapter numbers eight canons, including a theologian and a penitentiary canon, several honorary canons, and other priests, to whom are added, on feast days, students from the large seminary for divine service. The care of souls in the cathedral is exercised by a canon, assisted by two vicars, where there is a baptismal font, and where the relics of several saints are venerated, among which is the body of St. Santin, the first Bishop of Verdun. In addition to the cathedral, there are two other parish churches in Verdun, both equipped with baptismal fonts, several religious houses for men and women, two hospitals, a large seminary; a house of piety is desired. The extent of the diocese encompasses the entire province of Meuse, extending approximately thirty leagues in length and twenty in width, and contains more than three hundred thousand inhabitants, and many other places.

THE CATHEDRAL CHURCH OF NANCY, to which the title of Toul is appended, is vacant due to the translation of the Reverend Father Charles Martial Allemand Lavigerie to the metropolitan see of July Caesarea, or Algiers; to which the Reverend Joseph Alfridi Faulou, a priest of Paris, was promoted by the grace of Our Lord, at the recommendation of the Most Serene Emperor of the French. This same priest, promoted, has ad-

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mirably distinguished himself in receiving the confessions of the faithful, in preaching the Word of God; for many years he was chosen as Professor of humanities and rhetoric in the Seminary of Paris, and he was also the examiner of its clergy, director of the same seminary, and until recently, its superior. Nancy is a city of France, and formerly the capital of Lorraine, located in the province of Meuse, on the river of the same name, at the foot of the mountains, in a plain, and built in the best possible location under the open sky, and is inhabited by approximately fifty thousand souls under temporary French dominion. The Cathedral Church, sufficiently large and of Greek structure, dedicated to the Blessed Virgin Mary, is a suffragan to the Archbishop of Besançon. Its chapter numbers nine canons, including a theologian and a penitentiary canon, several other canons, several honorary canons, three parish vicars, other priests and clergy of the choir, to whom are added, on feast days, students from the seminary for divine service. The care of souls in the cathedral itself is exercised by a canon, assisted by three vicars, where there is a baptismal font, and where the relics of several saints are present, among which is the body of St. Sigisbert, King and patron of the city, and outside the city there is a cemetery. There are eight other parish churches in Nancy, and several chapels in the suburbs, all equipped with baptismal fonts, several religious houses for men and women, several lay sodalities, some hospitals, a house of piety, and a large seminary, and within the diocese there are also two small seminaries. The extent of the diocese encompasses the entire province of Meuse, extending approximately thirty-five leagues in length and ten in width, and contains more than four hundred thousand inhabitants, and many other places.

THE PATRIARCHAL CHURCH OF ALEXANDRIA, located in lands of infidels, is vacant due to the death of the Most Reverend Patriarch Dauli Augusti Foseolo, to which the Reverend Father Paulus Ballerini, already the Archbishop of Milan, was promoted, who had been elected in June of the year 1859, and had received consecration, but was unable to exercise his ministry due to reasons known to those concerned.

[*Latin ed. p. 692*]

692 PROMOTIONS BY CONSISTORY. Alexandria, the most famous city of Egypt, a patriarchal see, renowned as the work of Alexander the Great, is sadly held by the infidels. The Reverend Father Peter Viridis, from the diocese of Bisarcja, was promoted to the position of Capitular Vicar of the cathedral church, and a petition was made during the Consistory for the metropolitan church of Catania, in the presence of the Archbishop Dusmet; also for the churches of Milan, Rheims, Caesarea in Palestine, Turin, Messina; and also for the newly established archdiocesan church of Scodra, united canonically with the metropolitan church of Bar. FROM THE CONSISTORY HELD ON MAY 17, 1867. The Holy Father proposed: The metropolitan sees of Coloca and Bacsi, which had become vacant through

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the death of the Most Reverend Archbishop Joseph Lonovics, were united perpetually and canonically. The Reverend Father Ludovicus Haynald, formerly Archbishop of Carthage in the territories of the infidels, was transferred to them, by the grace of God, at the request of His Most Serene Imperial Majesty, King Francis Joseph I of Austria, King of Bohemia and Hungary. Coloca, the residence of the Archbishop of Coloca and Bacsi, is a city of the Kingdom of Hungary, in the county of Pest, built extensively on the plain near the Danube, and numbers over one thousand two hundred houses, and is inhabited by nearly fifteen thousand Catholic inhabitants, under the temporary rule of the aforementioned Most Serene Emperor and King. Four bishops are suffragan to the metropolitan church of the Blessed Virgin Mary Assumed into Heaven. Its chapter consists of four dignitaries, of whom the first is the Major Prefect, followed by ten canons, ten with theological and penitential duties, eight honorary canons, and other priests and clerics serving in the ministry. The care of souls is not exercised in the metropolitan church, as it lacks a baptismal font; there, among the sacred relics, the body of Saint Pius the Martyr is decently preserved. In Coloca, there is only one parish church with a baptismal font, one for men and another for women, a monastery, a boarding school for young men and girls, three lay sodalities, a hospital, and a seminary; a house of piety is desired. The archdiocesan church of Iconium, in the territories of the infidels, became vacant through the death of the Most Reverend Archbishop Anthony Ligi, and the Reverend Father Aloisius Puecher Passavalli, a priest of the diocese of Trent and a professed member of the Order of the Minor Capuchins of Saint Francis, who had been appointed to teach dogmatic theology in his Order, and who had also served as Minister Provincial of his province, as well as as a General Definitor in Rome and as a preacher in the Apostolic Palace, was promoted to it.

[*Latin ed. p. 693*]

PROMOTION. Iconium, even now a large and celebrated city, the capital of the province of Lycaonia in Asia Minor, frequently mentioned in the pages of the New Testament, still lies miserably under the yoke of the infidels. The EPISCOPAL CHURCH of Calydonien, under the Archbishop of Nsupactens, is vacant in the territories of the infidels due to the death of the Most Reverend Joseph Anthony Chaves. The Reverend Father Anthony Grech Delicata Testaferrata, a priest of the Melitensis diocese, who, having been granted a degree in both laws in Rome, has diligently served in ecclesiastical functions, particularly in administering the sacraments of confession, and who, among the domestic Prelates of the Most Holy Divine Name, and among the Referendaries of the Sacred Signatura, has been numbered. Calydon, a city formerly primary in Aetolia, situated on the Evenum river, still lies miserably under the yoke of the infidels. Then, a petition was made to the Most Holy Father for the sacred pallium for the

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metropolitan churches united to Colocensi and Bacsiensi, in the presence of the Archbishop Haynald, in the Consistory; also, for the Cathedral Church of Aretina, by virtue of a privilege granted by Clement XI, of blessed memory.

[*Latin ed. p. 695*]

SUMMARY OF THE ACTIONS CONTAINED IN THIS SECOND VOLUME.

From the CONSISTORY ACTS. Briefly described are the affairs of the CHURCHES: indicated from the Roman Pontiff, and the rest of ITALY.

The following were carried out in a public Consistory on June 25, 1866, concerning the canonization of the Martyrs of Gorcum, and of Nepi and Sutri, ibid.

B. Maria Francesca of the five Wounds of Monte Falisco, 549.

Ch. D. designations of episcopal churches in Fulginata, 602.

Recanati and Lauretano, 550.

Macerata and Tolentino, 602.

Some affairs were carried out by the Holy Father in a secret Consistory on August 6th, and mention is made of the granting of the sacred pallium to the Patriarch of Antioch of the Syrians, 65.

Melita, Juvenalis and Terlizi, 600.

Potenza and Marsico Nuovo, 604.

Messina, 594.

Catania, 554.

Aretina, 552.

Miniati, 552.

Pistoia and Prato, 601.

Grosseto, 552.

Reggio, 685.

Atri, 687.

Milan, 599.

Turin, 593.

Saluzzo, 603.

Albano, ibid.

Asti, 604.

Cuneo, 687.

Aosta, 593.

Casale Monferrato, 600.

Alexandria, 686.

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Savona and Noli, 551.

Luni and Sarzana, 553.

The following were carried out by the Holy Father in a secret Consistory held on October 29, 1866.

259. The Holy Father's allocution in the same Consistory, in which he vehemently complains of the actions against the Church in Italy, 261.

5. The Holy Father's allocution in the same Consistory, in which he laments and condemns the actions of the Austrian government against the Catholic Church, 268.

The allocution which the Holy Father gave in the secret Consistory on February 12, 1867, in which he spoke of the matter of appointing Bishops in the vacant dioceses of Italy, 441.

The actions carried out in the same Consistory and in the Consistories held on March 27th and May 17th, and some consistorial promotions concerning the material status of vacant sees are briefly described, 546, 593 and 684.

[*Latin ed. p. 696*]

696 SUMMA Gallinensis and Norense. Tarentaise. GALLIA, Bayeux. Rheims. La Rochelle (-Saintes). Nancy-Toul. Toul. Verdun. BAVARIA. Eysteltensis. ACTS. Concerning the faculty of granting dispensations in mixed marriages. 470. Concerning the dispensation granted in mixed marriages contracted with Italians. 672. Concerning cases reserved to the Supreme Pontiff. 673. Concerning the use of books of the heterodox in teaching the humanities. 673. FROM THE SACRED CONGREGATION INDEX. Decree... 595. From HUNGARY. Gran. Kollotschau. Bacsiensis. Albaregalensis. Satmár County. Mukachevo (Ruthenian). 596. 692. 595. 597. 597. Turin. 688. From ALGERIA. 43. FROM THE SACRED APOSTOLIC PENITENTIARY. Doubts and answers concerning the manner in which Bishops ought to act in the present circumstances in Italy. 675. FROM THE SACRED CONGREGATION OF THE COUNCIL. Concerning marriage, which is declared null due to lack of consent. 6. Concerning the Conventual Mass, to which all those who hold choral benefices are bound to attend and participate, according to the established order. 21. Concerning the parish, in which is treated the neglected form of presentation, the unsuitability of the presented person, and the canonical time elapsed in the collation of the parish. 67. Concerning the theological examination, in which is discussed the right of the Bishop to choose among the approved candidates, whom he judges to be more suitable. 74. Concerning the reduction of the canon, in which the cause is concerned with the nature of the emphyteutic contract, and the injury to the effect of diminishing the canon. 81. Concerning the Synodal Examiners, who cannot demand any emolument for performing their office. 88. Concerning the Mass for

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the people, to which Coadjutors, who are in charge of filial churches and are dependent on the parish priest, are not bound to attend. 90. Concerning the decree of separation, in which both spouses requested a divorce from the Judge for different reasons. 129. Concerning the decree of separation with regard to competence, in which the cause of divorce is judged in the Caesarean, Constantiniana Julia. 688. 689. APOSTOLIC LETTERS. Apostolic letters, by which the pious Archsodality, newly enriched with favors, is increased to aid souls detained in the fire of Purgatory through prayer. 481. Letters from the reigning Roman Pontiff, by which he congratulates the Canonical Father Gaduel, General Vicar of Aurelianensis, because the seed sown by him through the commentary on the life and deeds of the Venerable Bartholomew Holtzhauser has fallen on good ground, and abundant growth is foretold. 273. Apostolic Letters, by which indulgences are granted to those who visit the image of the Blessed Mary, perpetually succorer, on the day of the feast named after her. 365. FROM THE SACRED GREGORIAN ROMAN D. INQUISITION. Concerning the Catholic unity, or three letters are referred to concerning the reunion of Christianity sought by heterodox from the Anglican clergy. 657. 3.

[*Latin ed. p. 697*]

SUMMA: Regarding a certain declinatory exception of the forum. 137 Impediments to Marriage. 142 Service of the Choir, in which an Indult is granted for certain reasons to recite Matins with Lauds in the choir after Vespers and the Compline of the preceding day. 148 Conventual Mass, in which a certain agreement concerning the application of the Mass is discussed; concerning those who are obligated to apply a conventual Mass, and concerning the alms of the same. 194 Masses for the People, concerning the dispensation or reduction on festive days which are considered suppressed, in the case where there are more Masses to be applied, and the number of priests is insufficient. 205 Patronage and collation of the parish dignity annexed to the chapter. 209 Chapter Obligations, concerning the custom of fining canons who do not fulfill their duties due to illness, and concerning the obligation of fulfilling chapter statutes. 218 Chapter Penalties for the negligent, which accrue only to those present in the choir. 218 Suspension, Irregularity, and Deprivation of the Parish. 276 Residence and Parish Rights, in which the nature of the union of two parishes is discussed in order to reduce the obligations of the parish priest, and concerning the obligation of residing in the parochial house. 285 Celebration of Masses, in which it is discussed whether chaplains can be compelled to celebrate on certain days or hours for the benefit of the church, if they are not bound to do so by the law of the foundation. 297 Chapels, which have been declared to be secular, notwithstanding the decree of their erection and long-standing observance. 323 Chapels, in which the distinction is indicated that

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exists between secular chapels. 329 ACTS. 697 Support, in which the duty of the ecclesiastical judge in carrying out the will of a pious testator is discussed, and concerning the support to be granted to a patron verging on poverty. 332 Marriage, which the spouses contracted in a place where the law of Trent is in force, where the Decree of Trent, Tametsi, has not been promulgated. 385 Separation of the forum. 401 Distributions, which are due to canons due to a forced absence caused by demagogues. 407 Reduction of Masses, which is not granted to the legatee because of the lesser benefit derived from the legacy. 411 Order of Subdiaconate and Dispensation; in which it is discussed whether there is a compulsion to declare someone absolved from the obligations of the subdiaconate, or to fulfill them through dispensation. 443* Patronage, which, if it is familial or of noble birth, devolves to relatives with the cessation of the known family. 452 Service of the Choir, concerning a certain custom introduced in the parish church as a law to be observed. Aedicule, which was not to be exposed and was converted to profane uses. 461 Maintenance or Reintegration, in which it is disputed concerning the possession and rights of a certain filial church, whether the priest appointed to it should be considered a perpetual vicar, or rather a simple delegate of the titular parish priest. 497 Oratory, concerning sacred functions and parochial rights, in which the rights of a certain parish priest are discussed concerning offerings and sacred functions in the public oratory. 509 Guarantee, in which the obligation of a certain guarantor is discussed and determined, who is compelled to pay the fruits derived from a productive credit to the pious institution, because the principal debtor does not.

[*Latin ed. p. 698*]

698 He spontaneously relinquished the highest position, and could not be compelled to do so, nor did he later receive any compensation.

561 Concerning Theology, in which is discussed the nature of this benefice, which, once determined, can only be held by a theologian, and is not subject to the right of appointment; nor is it subject to the law of concurrence prescribed in Italy, if a lay patron appoints a theologian.

569 Concerning Jubilees regarding Distributions, in which is discussed the choral distributions which a canon can receive by means of a jubilee granted to him.

574 Letters by order of the Most Holy Lord, in which the prelates of the Catholic world are invited to Rome for the solemn decree of canonization.

321 Decree concerning the mandate of the Most Holy [Father], in which is considered the needs of the Church of Canne, which have been suppressed by the Russian government, and its proper pastor expelled.

606 Marriage, which was contracted between a heretic man and a Catholic woman before a heretical minister, where the decree *Tametsi*

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remains in force.

617 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS. Concerning monasteries regarding compensation, the sum of which is determined by the Holy Congregation in certain cases of the dismissal of the regular physician by the nuns, namely 24 years. This is to be paid in Italy and the adjacent islands, for the repair and restoration of churches, notwithstanding any contrary custom.

93 Concerning the Order of Jerusalem regarding the right to cast a vote, which is not enjoyed by professed knights with simple vows.

97 Concerning Sacred Visitations, in which is discussed the episcopal right to institute canonical visitations in the churches of regular canons.

15J ACTS. Concerning the fourth of funeral expenses, which were to be paid by the regular canons to the parish priest by force of custom.

158 Pensions, which cannot be validly imposed on parish priests without a special Apostolic approval.

222 Concerning Presentation and Institution, in which is discussed the patron who nominated someone to the canonry, and the law of foundation is not observed, etc.

227 Narration of the facts, by which certain controversies are clarified concerning the same matter, namely abortions.

334 Tonsure, which was conferred by an abbot who did not have the authority to do so.

336 Concerning the exemption from the jurisdiction of the Ordinary, which the same abbot claimed was due to him by certain privileges.

341 Concerning a doubt proposed regarding the inventory and the rendering of accounts of the assets of the benefice.

346 Concerning the expenses of litigation, which, according to the practice of the Holy Congregations, are generally not reimbursed by the successor.

413 Concerning the offering, commonly called the "supra sexta," in the alienation of the assets of the church.

418 Concerning a lay chaplaincy, which cannot be held by a simple cleric, when it requires the actual exercise of the priestly office.

424 Concerning emphyteusis, in which the general rule is determined to be followed in the case of a forced sale of an emphyteutic property belonging to the church, in order to open up a passage for railways.

528 Concerning a dispensation, which was requested by several individuals nominated by patrons for an ecclesiastical chaplaincy, who, although related to the founder by blood, were lacking the required qualifications.

528 FROM THE HOLY CONGREGATION OF INDULGENCES. Concerning the Society of Jesus, regarding the exemption of the Prima-Primaria sodality from the decree of the Holy Congregation of January 8, 1861.

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28 A response in honor of St. Anthony of Padua, with indulgences attached.

[*Latin ed. p. 699*]

ATREBATEN, or Decree, with the opinion of the Consultor regarding the authenticity of a certain relic, said to be of St. Francis of Sales, belonging to the Order of Preachers, the Confraternity of the Most Holy Rosary, which no one can establish without the permission of the General Master of the Order of Preachers.

MEDIOLLAN, where, from a vessel of blood attached to a niche, the bodies of martyrs were judged to be buried, and there is cited the Decree of the Sacred Rites of approximately the year 1863 concerning the signs of martyrdom.

ALBIEN, in which the doubt arising from certain difficulties regarding the authenticity of a certain relic of St. Cecilia, which is kept in the metropolitan church of Albi, is resolved.

Decree of the City and the World regarding the confraternities of the Daughters of Mary: and are added Apostolic Letters, by which this confraternity, established in the temple dedicated to the illustrious Virgin and Martyr Agnes outside the walls of the City, has been enriched with several indulgences, and finally raised to the rank of Archconfraternity.

Declaration of the decree of January 8, 1861, concerning the aggregation of confraternities.

UTINEN. Concerning the Confraternity of St. Peter the Apostle, in which three doubts are resolved regarding the statutes, which differ from the statutes of the aggregating Archconfraternity; and are referred Letters in the form of Briefs concerning the Archconfraternity of St. Peter.

Decree of the City and the World, concerning the manner in which the sick may obtain certain indulgences, who are not able to perform the prescribed works.

TURRILAN. Decree, by which the process in the recognition of certain relics, the discovery of which is described at length, was approved.

CENOMANEN. In which it is approved, and declared to be maintained, the practice of separating the Relic of the Holy Cross from the relics of other Saints.

Rescript, by which the privilege of the Sodalities of the Daughters of Mary in blessing medals is declared.

FROM THE HOLY CONGREGATION OF SACRED RITES.

AMERINA, concerning the introduction of the cause of beatification and canonization of the Servant of God, Father Francis Generous of Mary from Premosello, of the Order of Minor Friars, in which a brief account of the

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life of the Servant of God is given, and certain matters which are disputed are presented.

Decree concerning the miracle of the instantaneous and perfect healing of Blessed Leonardo of Port Maurice, through his intercession.

Decree concerning two miracles obtained through the intercession of Blessed Paul of the Cross.

Decree for the resumption of the cause of Blessed Margaret Mary Alacoque, in which a suppliant prayer is included.

Decree of confirmation of the cult rendered from time immemorial to the Servant of God, Paula Montaldi, a professed nun of the second Order of St. Francis, also known as the Clarisses, now Blessed.

Concerning chalices made of aluminum.

Decree of the City, in which the concurrence of the feasts of the instruments of the Passion of Our Lord with the Feast of the Chair of St. Peter in Antioch is discussed.

Decree, by which it is determined that it is safe to proceed to the solemn canonization of Blessed Leonardo of Port Maurice.

Decree, by which it is likewise determined that it is safe to proceed to the solemn canonization of Blessed Paul of the Cross.

Decree, in which it is determined concerning the miracles obtained through the intercession of the Venerable Servant of God, Benedict of Urbino, a professed priest of the Capuchin Order.

Decree of Beatification of the Venerable Father Benedict of Urbino, a professed priest of the Order of Minor Friars of St. Francis, the Capuchins.

Apostolic Letters, by which the Church of St. Alphonsus of Liguori in the City is enriched, and in it soon to be added, the illustrious and highly venerated Image of the Blessed Virgin Mary from Perpignan.

[*Latin ed. p. 700*]

700 SUMMARY OF ACTIONS. Indulgences are granted to those who visit the place named "Succursu."

365 Prayers in honor of the Blessed Virgin Mary, of the Perpetual Succor, enriched with indulgences, with a brief history of the image preceding them.

366 Vienna: Regarding the introduction of the cause of the Servant of God, Clement Mary Ofbauer, a priest from the Congregation of the Most Holy Redeemer: a brief outline of the Servant of God's life is presented, and certain matters are discussed.

465 Japan: Or, a decree concerning the celebrated cause of the Japanese Martyrs, in which it was judged: that the martyrdom is established by the evidence, so that the process may proceed to Beatification.

478 Bordeaux: Or, a decree concerning the validity of the processes in

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the cause of the Venerable Joan of Lestonac, foundress of the order of the Daughters of the Blessed Virgin.

482 Malaga (Hispalis): Or, a decree concerning the cult not yet established in the cause of the Venerable Father Didacus Joseph of Gadis, a professed priest of the Capuchin Order.

483 Naples: A decree concerning letters found and examined in the case of the Venerable Servant of God, Father Giles of Saint Joseph, a professed layman of the Order of Friars Minor of Saint Peter of Alcantara.

543 Toledo: Concerning the validity of the Apostolic processes of the Venerable Servant of God, Father Alphonsus of Orozco, a professed priest of the Order of Saint Augustine.

545 Japan: A decree of Beatification, or declaration of martyrdom, of more than two hundred Japanese Martyrs, by which it is determined that the process may safely proceed to Beatification.

638 The manner in which the aforementioned Japanese cause was debated and discussed is explained, especially concerning the necessity of miracles.

641 Petition regarding the military belt: In which is discussed a certain professed cleric who had obtained an indult of secularization, and to whom the title of military service was forbidden.

114 Parricide: In which a dispute arose concerning the violation of immunity, which impeded the completion of a process already underway.

117 Reassumption of clerical habit: In which a cleric who had previously laid aside his clerical habit, after being accused of a crime, resumed it, while also invoking the privilege of the forum.

175 Adjudication of the forum: In which it is debated whether pious legacies are or are not subject to the mixed forum.

352 Immunity: In which it is considered that the judge violated immunity by, in a criminal process, receiving from witnesses accusations against a person of the Church with his own authority.

427 Stipulation of a contract: In which is discussed the immunity enjoyed by buildings adjacent to temples, such as porticoes, atria, etc.

484 Immunity: In which is discussed the power, according to the sacred canons, by which a lay judge lacks the authority to inquire into a crime in which a cleric appears to be involved.

582 FROM THE HOLY CONGREGATION FOR ECCLESIASTICAL IMMUNITY. FROM THE SECRETARY OF THE EMINENT VICARIATE IN THE CITY. Regarding the extraction of a thing that had escaped from the hands of soldiers, who had fled to a place of immunity.

45 Concerning clerics from other dioceses residing in the City and being promoted to Orders.

585 FROM THE HOLY CONGREGATION FOR THE STATUS OF REG-

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ULAR CANONICS. Concerning the declaration of Apostolic letters, dated March 19, 1857, in which the Superior of regular canons were denied the faculty of postponing the three-year term of simple vows, when a student reached the age of 25 years.

160 Concerning the declaration of Apostolic letters, regarding the validity of a solemn profession, which, without prior simple vows, was made after the decree *Neminem Latet* and before the Constitution *Ad Universalis*.

301

[*Latin ed. p. 701*]

SUMMA concerning the Confraternity named after Saint Peter, 680 APPENDICES. Appendix I. Concerning the validation of a marriage, which, although celebrated before a Parish Priest and witnesses, was impeded by no canonical impediment. 52 Appendix II. Decree of the Sacred Congregation for Indulgences and Sacred Relics, dated January 8, 1861, in which the manner to be observed by those who enjoy the power of aggregation in canonically establishing or founding confraternities is prescribed. 57 Appendix III. Concerning the practice of the Sacred Apostolic Penitentiary regarding dispensations in matrimonial cases in the external forum. 62 Appendix IV. Concerning the office of the Bishop in granting theological and penitential guidance, according to the Constitution *Pastoralis Officii*, issued by Benedict XIII for Italy and the adjacent islands at the Roman Synod in the year 1725. 122 Appendix V. Concerning the practice of the Sacred Apostolic Penitentiary regarding dispensations in matrimonial cases. 1 2 6 Appendix VI. Concerning the tradition of the Christian catechism or doctrine in the churches of Regular, non-parochial institutions. 184 Appendix VII. Concerning the practice of the Sacred Apostolic Penitentiary regarding dispensations in matrimonial cases. 190 Appendix VIII. Concerning the chapter statutes. 253 Appendix IX. Concerning the practice of the Sacred Apostolic Penitentiary regarding the impediment of public dishonor arising from valid betrothals. 257 ACTORUM. 701 Appendix X. Thoughts which the venerable Priest Barth. Holtzhauser entertained for the benefit of those who have dedicated themselves to ecclesiastical service. 307 Appendix XI. Concerning the office of the ecclesiastical judge in the execution of pious wills or pious dispositions. 369 Appendix XII. Concerning the practice of the Sacred Apostolic Penitentiary regarding the impediment of public dishonor. 381 Appendix XIII. Exposition and resolution of causes, as a norm sent to the ecclesiastical judge for rendering judgment on a certain case of a marriage contracted outside the parish. 434 Appendix XIV. Decree concerning the method to be observed in cases which are conducted before the Sacred Congregation of Bishops and Regular Canons, in due order. 439 Appendix XV. A distinguished letter, which the celebrated Alexander Sperelli, Bishop of Eugubinus, wrote to the Most Serene Caesar, Duke of

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Estensis, in defense of ecclesiastical immunity. 488 Appendix XVI. Concerning the practice of the Sacred Penitentiary, or concerning the clause: "after prior absolution from ecclesiastical censures and penalties for any offenses incurred, and from incestuous crimes, with grave and salutary penance." 493 Appendix XVII. Statute of the Archconfraternity of Saint Peter the Apostle, existing in the City. 556 Appendix XVIII. Concerning the faculty of Clerics or pious institutions to invest their own funds through a contract, which is called a "credit with interest." 606 A warning to the reader concerning the acts pertaining to the Holy See concerning Russia and Poland. 383

[*Latin ed. p. 702*]

INDEX OF CONCLUSIONS, WHICH ARE NOTED IN THE GENERAL AND MOST OF THE ACTS CONTAINED IN THIS VOLUME, WHERE THE MATTER IS AMPLY EXPLAINED OR STATED IN THE RESPECTIVE ACTS. These conclusions are contained in the following words: Local immunity. Abbots. Personal immunity. Alienation. Indult of secularization. Benefice. Investiture. Benefits concerning burdens. Benefits concerning reservation. Possessory judgment. Rights of patronage. Apostolic approval. Right of asylum. Chalices. Canonization. Legate concerning Masses. Chaplains. Marriage. Choral distributions. Half-year's revenue. Divorce. Physician concerning monasteries. Emphyteusis. Conventual Mass. Bishop concerning Regular canons. Mass for the people. Bishop concerning Testaments. Mass concerning permutation. Exemption. Sacred ordination. Guarantee. Parish priest concerning rights. Civil jurisdictions. Parish priest concerning removal. Parish priest concerning residence. Abbots. There are three species of inferior prelates, or Abbots, page 345. Inferior prelates, or Abbots of the third species, namely, those who possess ordinary authority with a separated people and territory, are truly and properly called Abbots of Nullius Diocese, ibid. To inferior prelates who are not Regular, and to Regular Abbots, the privileges of conferring the tonsure and the minor orders were taken away by the Council of Trent, privileges which they previously enjoyed, pages 340. In a certain privilege granted for obtaining the Blessing from the Bishop, in the manner of Abbots, the prescription and custom. The prescription and custom. The practice of the Holy Congregations. Proof of validity and fear. Judicial process. Vows of profession. Sacred relics. Simony. Sodalities. Betrothal. Chapter statutes. Suspension. Temple. Theological provision. Competent tribunal. Union of Parishes. Catholic unity. Perpetual vicariate. Furthermore, the particular privilege of conferring the tonsure is not included in the use of the mitre and the crozier, ibid. The tonsure and the minor orders conferred by an inferior prelate who does not have such a privilege are not only illicit, but are also considered null and void, page 341. He who has received the tonsure and the minor orders in this way may be compelled to relinquish

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the clerical habit, ibid. Both he who conferred the tonsure and the minor orders, and he who received them, are subjected to salutary penance by the Apostolic See before they can be absolved and dispensed from any censures and penalties incurred, ibid.

[*Latin ed. p. 703*]

INDEX concerning various matters. Alienation. In the alienation of property belonging to the Church, after obtaining Apostolic approval, it is not necessary to wait for the intervals of twenty days and six days, as prescribed by the Benedictine Constitution and the general decrees of the Holy See concerning Bishops, page 422. For the Church, or the pious institution contracting as if it were a minor, has the right to a delay, and the benefit of full restitution, ibid. The time to be waited for, concerning the twenty days, has the nature of a delay, just as the six days have something of the character of full restitution, and if the Church has been harmed in previous acts of alienation, ibid. The bidder who wins in an auction does not have the right to complete the contract, unless, after all the legally required procedures have been exhausted, the property in question has been definitively awarded to him, page 422. Nor does the bidder to whom the property has been initially awarded, but to whom execution has not been ordered by Apostolic approval, seem to have the right to claim that award again, whenever the Church refrains from the property in question. He has only a certain right of preference, whenever the Church itself deems it appropriate to have the property judged by someone else, ibid. Beneficiates. Before canonical institution and the beginning of possession, it is not permissible for a beneficiate to intrude into the administration of the goods of the benefice, ibid. Benefits concerning obligations. By Episcopal authority, no servitude can be imposed on ecclesiastical benefits that would be contrary to free collation, page 214. The obligations of chaplaincies or benefices are to be determined according to the law of foundations, and by ordinary authority, these obligations cannot be increased, page 299. 703. Therefore, if the law of foundations does not specify certain days or hours in which Masses are to be celebrated, the chaplain cannot be regularly compelled to celebrate on certain days and hours, page 300. Pensions, without Apostolic approval, are not validly imposed on parish benefices, page 226. The Apostolic See, ordinarily speaking, only permits pensions to be imposed in order that the parish churches themselves may be repaired, or furnished with sacred furnishings, ibid. Benefits concerning reservation. It is necessary to distinguish between the right of devolution and the right of reservation, page 3. The right of devolution, established by the Holy Canons, is a penalty for negligence, so that, after the legitimate time has elapsed, the collation of a vacant benefice is transferred to the person to whom it legally belongs, ibid. Therefore, this penalty for such negligence does not apply, whenever the collator can demonstrate ignorance of the vacancy, or is legitimately

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hindered. For then, he is not considered negligent, ibid. However, all of this does not apply to benefits that, for some canonical reason, remain reserved to the Holy See. For reservation does not necessarily imply the idea of a penalty, page 74. Furthermore, according to the Constitution of St. Pius V, parishes, after the uselessly established period of vacancy has elapsed, remain reserved to the Holy See, so that the spiritual welfare of the parishioners will not be left in suspense, page 215. Benefits that become vacant due to the vacancy of the episcopal see are reserved to the Apostolic See, according to Rule II of the Chancery, and by virtue of which (where it is in force), benefits that become vacant with the fullness of the see are also considered reserved, and which remained reserved to the Holy See after the episcopal see became vacant, page 214. Apostolic Approval. The Apostolic Approval, or Apostolic Rescript, requested by a pious institution, after it has been obtained, confirms and extends the contract, but does not change the conditions of the contract, page 569.

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704 INDEX Chalices. The materials with which chalices are made for the sacrifice of the Mass are either permitted, prescribed, or forbidden, page 239. Chalices made of pure aluminum or of metals mixed with it cannot conveniently and easily be classified in either of the two categories of materials. That is the opinion of the Holy See, which does not consider it expedient to introduce other materials into divine worship, even though they may appear more suitable or better in some respect, because they still bear the mark of novelty and are foreign to the venerable antiquity.

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It has always been established according to Catholic doctrine that he who has suffered death from hatred of the faith is a true Martyr, and that eternal salvation is certainly obtained through the martyrdom itself suffered, page 656. However, some have sometimes doubted whether signs are required in order that someone may be safely declared a true Martyr, so that he may be enrolled in the public list of the Blessed, page 656. The Roman See, from practice, has determined that signs are required, if, in any part, the proofs regarding the cause of the martyrdom or the martyrdom itself suffered for the same cause are lacking, page 656. When the cause of

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martyrdom and the cause of the martyrdom are duly proven, the examination of signs is not refused, which, although not necessary for Beatification, nevertheless contribute to the splendor of the martyrs, page 656. However, these things cannot be said when dealing with the causes of Confessors, in which, even if virtues are proven up to the point of death, miracles are required both to confirm that the servant of God has died in the state of grace, and to grant him public veneration, which is only due to him, whom God, by His testimony, exalts on earth after death, page 656.

Chaplaincies. There is a great difference between ecclesiastical and lay chaplaincies. The former are considered true ecclesiastical benefices; the latter are merely pious foundations or pious bequests, page 327. Ecclesiastical chaplaincies are established by a formal decree of erection, issued by the ordinary authority according to the law of foundations, ibid. They are also conferred by episcopal letters, which are called bulls, or letters of collation, or institution, just as other benefices are conferred, whether free or of patronage, ibid. In contrast, lay chaplaincies do not admit a formal decree of erection, nor are they conferred by the Ordinary, either by free collation or by institution, although it is the duty of the Ordinary to have them in consideration and to ensure that the will of the founders is fulfilled, ibid. Although lay chaplaincies often have the form of ecclesiastical chaplaincies, they do not change their nature, whenever the authority of the Church is excluded from their erection by the founder, ibid. Therefore, the judgment of whether a chaplaincy is lay or ecclesiastical depends entirely on the law of foundation, which either excludes or does not exclude said authority, ibid. Just as a formal decree of erection provides evidence of an ecclesiastical chaplaincy in the absence of a law of foundation, so, when there is a clear law of foundation that shows that a chaplaincy should be lay, the decree of erection does not operate to the contrary, ibid. Among lay chaplaincies, there is a distinction between those whose nature is ecclesiastical-

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INDEX G: Chaplains more fully imitate the example of Christ: they resolve matters with mere words or demonstrations, but are called "pious legacies," "heirs designated," or "foundations," descending from the family; 331. Lay people can also possess chaplaincies, and lay heirs can inherit them, and lay people can descend from them, receiving the fruits of the chaplaincy, page 410. A chaplaincy, however, is a priestly office, and the Holy See can grant dispensation to possess it without the usual qualifications, and the emoluments can be obtained without simple clerical status, page 426. Dispensations are not granted for trivial reasons, but only for serious causes; page 427. During the absence of a canon, the fruits of the chaplaincy are not to be distributed, but are to be held by the absent canon, who, upon his return, is to receive them; however, if the canon has not diligently inserted the choir members into the chaplaincy, the emoluments

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or benefits are not to be given to him, but are to be distributed to the choir, and the absent canon is liable to all penalties, present and future, for failing to fulfill his duties; although the Holy See may, for just causes, grant an exemption from this obligation, the canon must still make restitution, page 705. Special causes of absence are granted to choirs for daily and extraordinary distributions, and for fixed absences; page 705. Other causes for which choirs are granted the right to receive and distribute are to be condemned, page 217. The distributions to the choir have a special reason for being, so that they may more diligently perform their duties, and are not to be neglected; if they are neglected, the choir members lose their right to the distribution, and are subject to penalties, whether by written order, by money, or by other means, and are liable to the same penalties as if they had been absent; in the distribution, however, there are certain errors and omissions that are contained within the law, and it is easy to defend them; the common revenue of the church, the acts, and the absences of the choir members must generally increase, page 11, asc. XXIV. In this case, the law is not to be applied to the choir, but to the absent choir members; page 11, asc. XXIV. If the choir members are absent, they are to be given a place in the distribution, and if they are negligent, they are to be punished; page 221. If the choir members are negligent, they are to be punished, and they are to be sent to the part of the choir that is to be punished, page 137. If the choir members are negligent, they are to be punished, and they are to be sent to the part of the choir that is to be punished, page 46.

Divorce. The distribution of goods in the case of divorce is to be made according to the law, and the wife is to be compensated for the loss of her dowry, and the husband is to be compensated for the loss of his conjugal rights; page 406. If the wife is a soldier, the dowry is to be given to her, or to her children, or to the church, according to the law; page 406. If the husband is guilty of adultery, he is to be punished, and the wife is to be compensated for the loss of her conjugal rights; page 406. If the adultery was committed with the consent of the wife, the wife is not to be punished, but the husband is to be punished; page 406. If the adultery was committed by the husband, the wife is not to be punished, but the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, both are to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a girl, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, the wife is to

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be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, and the child was a boy, the wife is to be punished, and the husband is to be punished; page 406. If the adultery was committed by the husband and the wife, and the wife was pregnant, and the child was born, and the child was a boy, and the child was a twin, and the child was a boy, and the

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INDEX GENERALIS. Emphyteusis. A contract of emphyteusis, in which the rent is compared to the fruits of the property, takes on the nature of a lease-conveyance contract, page 87. Therefore, to the extent that such a contract resembles a lease-conveyance, it is governed by the same laws. For wherever the reason for a law exists, there the disposition of the law also applies, ibid. Consequently, no one can claim a substantial injury unless they prove that the established rent is more than double the fruits of the property received in emphyteusis, ibid. The price obtained from a forced sale of a portion of the emphyteutic property, intended to benefit the direct ownership of the Church, in order to open up passages for the public good, such as railways, should be invested in the acquisition of rural properties or securities of the public debt of the Holy See, page 828. This new acquisition, whether of property or securities, is understood to replace a portion of the emphyteutic property that was sold under duress; therefore, it takes on the nature of an emphyteutic property in place of the one that was replaced, ibid. Therefore, this new acquisition must be understood to be subject to the same laws as a contract, ibid. The Bishop concerning Regular Canons. Chapters of Regular Canons, which support a number of twelve or more religious, are exempt from the jurisdiction and the sacred visitation of the Bishop, page 157. Chapters that do not support such a number are subject to the jurisdiction and visitation of the Bishop, according to the terms established by Apostolic sanctions and declarations of the Holy See, ibid. The Bishop can demand that priests from outside the Regular Canons be admitted to celebrate Mass in the churches of the Regular Canons only after their letters of dismissal have been examined, ibid. In the proper sense of the term, the Bishop cannot prohibit Religious from publicly teaching Christian doctrine and the catechism, ibid. However, he can determine the manner in which both of these things are carried out, ibid. The Bishop concerning Testaments. It is the duty of the ecclesiastical judge to defend the intentions of pious testators and to order their execution, page 333. It makes no difference if the ecclesiastical authority is excluded by the testator from directing and administering the matter. Whenever administrators, or

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others designated, do not fulfill their duties, the Ordinary must be the one to take action, for he is, by law, the executor of all pious intentions, page 334. Exemption. Active exemption from the jurisdiction of the Bishop is divided into natural, page 345, given, and prescriptive. The privilege of a given exemption must be clear and manifest, ibid. The necessary condition for a prescriptive exemption is that it be based on an ancient custom, which is endowed with all the requirements prescribed by law, ibid. Various privileges of exemption from the jurisdiction of the Bishop, which were granted before the celebration of the Council of Trent, were revoked by the Fathers of that same Council, ibid. The privilege of wearing the mitre and the pontifical vestments with other insignia does not imply active exemption, ibid. The privilege of active exemption from the ordinary jurisdiction of local Bishops is usually granted only by the Apostolic See for very important reasons, ibid. Suretyship. In judging questions concerning contractual obligations, the answers of the ancient jurists are most helpful, which, being handed down according to the norm of justice, never lose their force, page 568. He who has guaranteed the payment of the fruits of a legitimate productive credit is not released from the obligation to pay the fruits if the principal debtor does not pay, ibid. The principal debtor who does not pay the fruits is also in default in returning the property, ibid.

[*Latin ed. p. 707*]

INDEX GÌ: A creditor is not strictly bound by law to seize the debtor's principal assets for the restitution of the principal, just as a guarantor, who has pledged his faith solely for the profits, is released from payment; see ibid. For a solidary guarantor is bound by the same obligation as the principal debtor; see ibid. Therefore, if a guarantor cannot easily avail himself of any legal remedy against the principal debtor, such as to pay the profits or restore the principal, he is perpetually bound to pay the profits; see ibid. Nor is the creditor obliged to transfer pledges or mortgages for the principal to such a guarantor, since he has not pledged his faith for the principal, but only for the profits; see ibid. Civil Governments. A decree of the Sultan dated October 8, 1866, provides a clear example of how civil governments can and should be referred to the Catholic Church, and to the Church's authority; see page 616. The comparison established between the Muslim and Russian governments reveals a difference: while the Muslim empire maintains both relationships [with the Church], the Russian Empire, contrary to sacred canons, subverts both relationships; and it acts and governs as if the authority of the Catholic Church were not distinct from the authority of the schismatic government; see ibid. For, according to the canons, the civil authority must refer itself to the Catholic Church, not merely as to any religious society, so as not to impede the free exercise of religion; but as to a perfect religious society, supporting and defending its rights, laws, and authority; see ibid. Canonical Hours. In cathedrals and col-

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legiate churches, the Divine Office must be recited at the appointed hours; see page 180. The hours for the choral recitation of Matins with Lauds are not the evening hours of the preceding day; this is indicated by the name "Matins" itself, and the mention of dawn in the Lauds further confirms this; see ibid. Therefore, although the old custom of publicly reciting the praises of the Creator in Lauds on the same day is no longer always observed in secular churches, it is foreign to the established order of the Church for the choral recitation of Matins to take place at the time when the Church has assigned evening prayers; see ibid. If there are valid reasons for this, the Holy See perpetually grants this anticipation; if the reasons are temporary, the Bishop prudently remits it for a time; see ibid. Local Immunity. No secular authority has the right to exhume a body from a place of immunity, even if the secular authority seeks to do so in order to ensure that public justice is served; see page 120. When granting a secular official the faculty to exercise secular jurisdiction in a place of immunity, the Ordinary must issue a protestation, according to the head of the Precepts, whenever it may seem that the official is cooperating in the infliction of the penalty of blood; see ibid. In addition to excommunication, which those who violate immunity incur by the very act, any legal proceedings arising from the violation of a place of immunity are invalid; see page 121. Buildings that are contiguous to sacred temples and constitute their external ornamentation, and that are connected to them, enjoy ecclesiastical immunity, according to the canons; see page 486. The Holy See repeatedly withdraws this same ecclesiastical immunity from these external temple areas, while the immunity within the temple grounds remains firm; see ibid. External buildings that, although they appear to be located within a place of immunity, are not connected to the temple and are rented to lay people, do not enjoy this immunity; see page 487.

[*Latin ed. p. 708*]

708 GENERAL INDEX. "Personal Immunity" - "Indult of Secularization." Although, according to common law, a minor cleric who has laid aside the clerical habit does not have the right to invoke the privilege of the forum: nevertheless, upon the resumption of the habit, which is not shown to be done in fraud, he again enjoys the privilege (page 178). Indeed, even if the conciliar conditions are not cumulatively observed, although such a cleric does not have the right to invoke the privilege of the forum, nevertheless the Bishop's right to reprimand such a delinquent cleric remains, provided the cleric remains [in the clergy], page 179. In cases of homicide imputable to a minor cleric who has not observed the requirements of the Council, no privilege of the forum can in any way be invoked after the Benedictine Constitution, page 180. In criminal cases in which a certain ecclesiastical person is found to be involved, a lay judge, according to the sacred canons, cannot proceed to render judgment against him, page 431.

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Nor can he proceed to frame the process, whenever witnesses testify that the ecclesiastical person committed a crime, unless the proper procedures are observed, ibid. For the process, which, by its jurisdiction and the manner in which it is carried out, is in a certain sense related to a judicial sentence, just as matter is related to form, ibid. Therefore, he who is without jurisdiction to render a sentence against an ecclesiastical person, has no right to prepare the material, nor to frame judicial acts which directly and immediately refer to that person and the sentence, ibid. According to the sacred canons, if a lay tribunal institutes an inquiry into a cleric, the acts, as they infringe upon ecclesiastical immunity, are null; and all that may have followed in the same process are tainted with the censure of nullity, page 584. Therefore, a criminal case in which an ecclesiastical person appears, accused of a crime, must be heard in the ecclesiastical court, ibid. By an indult of secularization, which is sometimes obtained from the Holy See, solemn vows are not absolved, page 116. Therefore, the principal effects produced by such an indult are the commutation of the cloister with one's own home, and the commutation of the Superior to whom obedience is due, ibid. Therefore, such a professed person remains distinct from the Christian people by reason of the dignity which he has acquired before God and the Church by taking vows: hence, he does not lose the privilege of the forum, ibid. Therefore, in such a state, neither military service is appropriate, nor the exercise of sordid and indecent arts, ibid. Investment. Schedules of public debt of the Holy See can repeatedly substitute for funds, page 528. Indicium possessorium (Indications of possession). Questions concerning possession are of two kinds, either concerning retained possession, or concerning recovered possession, page 507. In legal language, he who has the right to retain possession is to be maintained; while he who is to recover possession is said to be reintegrated, ibid. Questions concerning possession can be separated from, and often must be separated from, questions concerning the legal title to possession; and the former, according to legal language, are said to be in a possessory action, while the latter are in a petitionary action, page 508. A judgment issued for the maintenance or reintegration of possession can be annulled by a contrary petitionary judgment, especially if even a long-standing possession is shown to have been infirm, and to have obtained no force of prescription, ibid. Rights of patronage. Just as it is not permissible to abolish legitimate rights of patronage, so also it is not permissible to reduce ecclesiastical benefices to servitude under this pretext, page 214.

[*Latin ed. p. 709*]

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Although the law generally allows four months for designating a lay patron, this period can be shortened by special foundation laws (page 231). A call to a benefice, which is considered passive, is divided into a mediated

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call and an immediate call (ibid.). A mediated call occurs when several individuals are found to possess the prescribed qualifications equally; in this case, the designation of an active patron is necessary to obtain the benefice (ibid.). An immediate call exists when only one individual possesses the required qualifications, and that individual is considered to be called by the Founder himself, so that they have the right to obtain the benefice without the designation of an active patron (ibid). If a patron designates a person for a benefice within the allotted time, but that person subsequently proves to be unsuitable, the patron retains the right to designate another person, even if the allotted time has passed (ibid). Furthermore, the same right applies to a lay patron who has designated an unsuitable person, provided it does not appear that the patron knowingly made such a designation (ibid). The right of patronage by lineage is said to exist when the Founder reserves it for the benefit of the descendants of a particular lineage or family designated by the Founder (page 457). In the right of patronage by lineage, where descendants are entitled by their own right, the negligence of predecessors does not affect the rights of successors, and therefore, prescription cannot be asserted against them (page 458). Under the terms "house" and "family," not only agnates (descendants through the male line) but also cognates (descendants through the female line) are generally included, unless it is shown that the testator expressly or tacitly excluded cognates (ibid). If the line of agnation is lacking, the line of cognation succeeds to the right of patronage, provided that it has not been excluded by the testator (ibid). In the right of patronage by lineage, established as if for a university, all members of the family called by the testator together have the right to designate, namely, fathers with their sons, grandfathers with their grandsons, males with females (page 833). If the right of passive patronage is abolished, those who happen to be members of the family of patrons cannot, by any means, claim a special right of precedence in competition with outsiders (ibid). Furthermore, in this case, the designations of relatives are not even to be considered if they lack the qualifications required by both the testator and the law (ibid). Therefore, the person who is found to be uniquely qualified should be instituted to the benefice, even if it is not certain that all those who designated are true patrons (ibid). According to the most recent law, patrons cannot interfere in the administration of assets pertaining to patronal benefices (page 352). It is a long-standing custom that patrons administer patronal benefices when they are vacant (ibid). The Ordinary can, in the case of at least the negligence of patrons, demand an accounting from them, even if it would not otherwise be his right (ibid). Those who are granted the grant of jubilation (which is granted as a reward for labor and diligence, prompted by equity) are to be considered as members of the choir and serving in divine offices, even if they are absent (page 376). By virtue of this consideration or legal fiction, they have the right to all emoluments that diligent canons receive for serving in divine

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offices (ibid). However, this right, derived from the grant, may be subject to limitations arising from legitimate chapter constitutions, the dispositions of testators or donors, and legitimate customs (page 577). However, those granted the grant do not have the right to receive emoluments derived from secular functions; for it appears that the will of the donors is opposed to the receipt of such emoluments (ibid). The right of asylum. While the ecclesiastical right of asylum remains firm according to the canons and pontifical constitutions, the Apostolic See, considering the circumstances and local conditions, moderates this right economically, so that it does not cause serious harm to public order (page 31). The right of asylum, which provides a safe haven for those fleeing from the hands of soldiers, does not cease, even if...

[*Latin ed. p. 710*]

710 INDEX GENERALIS. Regarding military personnel, it appears that the right of asylum has become attached to their property. Indeed, the sacred right of asylum is most favorable, ibid. Therefore, it is the duty of the ecclesiastical judge to ensure that, whenever a violation of local immunity is established, it is restored through legal means, by returning the person captured to the place from which they were taken, ibid. Those who violate the right of immunity incur penalties by their very actions. Regarding Masses. A legate to whom the obligation of Masses has been assigned is not permitted, by his own authority, to suspend the celebration of Masses, page 4. Nor is there room for a reduction of Masses if the legate's income is sufficient and even more than sufficient to fulfill such an obligation, ibid. A smaller endowment, especially if it is temporary, cannot be the cause of a permanent reduction, ibid. Marriage. Marriage between persons who are, by natural and ecclesiastical law, suitable for it, is contracted solely by consent, with the *Tridentini forma* observed where the Council of *Trent* is in force, page 19. Mutual cohabitation of the spouses is required, even if children have been born, page 20. Those who reside in a place where the decrees of *Trent* are in force, and who travel to another place to enter into marriage more freely, do not contract a valid marriage there, provided they have not previously established a domicile according to the norms of canon law, even if the decrees of *Trent* do not apply there, page 398. It does not matter whether the parties acted in good faith in doing so in order to free themselves from some less equitable impediment. For the marriage is not invalid because of an intended fraud, but because of the fact that it easily renders the law of *Trent* ineffective; page 399. Therefore, the decree, although it does not only bind persons because of their place of residence, but also affects those persons to some extent, until they acquire a new right to contract marriage in another territory according to the old law, ibid. This new right arises from the domicile, by which the parties become residents of another place, ibid. A marriage that is considered to have been

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contracted clandestinely does not have the force of a valid marriage; indeed, the celebration of such a marriage terminates any betrothal obligations that preceded it, ibid. However, marriage is not contracted by any consent; but by a consent that is free from serious coercion and fear, ibid. For this is a special contract that originates from the mutual love of the parties, guided by nature, and which carries with it very serious obligations under divine law, which the parties cannot disregard; among these is especially the perpetual bond by which they remain bound, ibid. Therefore, each spouse is fully free, unless they are bound by some other title, ibid. It is certain that, according to the Apostolic See, mixed marriages or marriages with heretics, not contracted according to the decrees of *Trent*, where the *Tametsi* decree has been promulgated and is in force, are null and void, page 637. Therefore, consent extorted from a reluctant party, obtained by force, has no proportion to the matrimonial obligations that the parties must sustain by their own free will, ibid. Hence, a marriage entered into by force and fear is null by its very nature, whatever may be said about other contracts, ibid. For heretics, cleansed by the sacred sacrament of baptism, bear the indelible character of divine filiation (which, to their own detriment, they contract), and although they have been cast out from the tree of life by their own fault, they cannot deny the authority of the Church, which can extend itself to all those who are perpetually marked by the character of Christ, ibid. A marriage entered into by force and fear is not validated after the law of *Trent*, and the *Tametsi* decree, both in the mind of the Fathers of *Trent*, and in the constant teaching of the Church,

[*Latin ed. p. 711*]

INDEX G: Concerning the practice of Sees and Churches, and also concerning heretics and those living within parishes subject to decrees, ibid. Therefore, all questions which arise concerning such marriages do not pertain to the principle of law, but rather to the application of that same principle to the specific circumstances and places involved, ibid, media Annata. In Italy, and the adjacent islands, a "media annata" (half-year's revenue) must be paid for the construction of cathedral and collegiate churches, page 96. However, churches which possess sufficient endowments, or which are subject to the patronage of other communities or individuals, are exempt, ibid. In the calculation of revenues, fixed and real expenses must be deducted, but not personal expenses, ibid. The "media annata" can be demanded for the maintenance of the church building, but not for the preservation of sacred furnishings, ibid. Furthermore, this payment cannot be waived under the pretext of a different custom, ibid. Regarding Physicians and Monasteries: If a monastery loses confidence in a physician or surgeon to whom the right of perpetual, full, or semi-full medical care of the monastery has been entrusted, the monastery can simply dismiss the physician, page 27. However, the physician thus dismissed can demand only fair

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compensation, not the perpetual right that was somehow granted to him, but rather compensation for the services he actually rendered, estimated in proportion to what is customary in the region, ibid. Even though it is considered that a contract of lease and hire for services and a fixed fee intervenes in such cases; nevertheless, the agreement is understood to be such that, just as the physician has the faculty, at the discretion of the community, to reside there; so also the religious family retains the faculty to provide for itself, as it may deem best, if the opinions of the community are not conducive to its well-being, page 28. Conventual Mass: The conventual Mass holds a prominent place among choral services, page 204. All those who hold a choral benefice, and those who belong to the body of the Chapter, are obliged to celebrate and apply it for the benefit of the benefactors in general, page 24. Those who, by reason of their choral benefice, are bound to other choral offices, are also obliged to celebrate and chant the conventual Mass in their turn, according to the particular customs and special statutes, pages 204 and 24. The celebration of the conventual Mass cannot be separated from its application for the benefit of the benefactors in general, which application, according to ancient ecclesiastical custom, must always be performed first, ibid. Therefore, just as the celebration is an obligation, so too is the application; hence, neither the canon celebrating nor the beneficiary can absolutely demand a reward as an act of charity for such celebrations, ibid. It is fitting, by reason of equity, that those who chant the conventual Mass should receive a special reward, which, although often called an alms for the Mass, is rather a part of the distribution assigned to the choral offices, ibid. From this, it also follows that colleges distinct from one another, which belong to the same choral body, should regularly deduct the aforementioned reward from their distinct revenues, or from common revenues, if they are not distinct in the distribution of revenues, maintaining the amount according to custom, or according to a special law established, page 205. In Chapters of more recent foundation or renewal, it is fitting that all should contribute from their revenues to the establishment of a Mass from which an alms for the conventual Mass can be determined, page 24.

[*Latin ed. p. 712*]

712 GENERAL INDEX. The portion of the contribution is remitted at the prudent discretion of the Bishop, who, considering the revenues and circumstances of the individuals, determines the amount according to his judgment, ibid. Mass for the People. On certain feast days, which are said to be suppressed, some obligations are relaxed, solely for the benefit of the Christian people: therefore, all ecclesiastical offices which are connected with these relaxed obligations, and which can exist independently, remain intact, page 207. The application of the Mass for the People is considered among the ecclesiastical and pastoral duties, which can be performed in-

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dependently of the presence of the people, and therefore, this obligation does not cease in parishes and other places, even on days when the feast is "suppressed," in any way, page 208. Therefore, it is not a new obligation that is being discussed in the famous encyclical *Amantissimis*, but rather a declaration of an existing obligation, ibid. It is not a legitimate reason to relax this obligation if there is a large number of Masses that cannot be filled due to a lack of priests, ibid. For the obligation to offer the Mass for the People is a serious one, derived from divine law, and it urges pastors in the exercise of their pastoral office, which has been entrusted to them by the Church, and is not easily relaxed; especially since there are other means of fulfilling other obligations, ibid. Mass regarding exchange. An agreement, even with the consent of the Bishop, to exchange the application of Masses is not permissible, unless it is a reciprocal exchange of alms, page 203. Nor is such an agreement permissible, even if something intervenes that seems to be equivalent to an equal exchange of alms. For both agreements, which would be intended to be observed perpetually as if by law, at least in appearance, would either have the nature of seeking gain, or would be valued at a price of temporary utility, ibid. Indeed, a perfect exchange of the application of Masses and alms is not permissible if the obligations of the celebrations, which are real and fixed, are exchanged for obligations of celebrations that are personal and incidental, ibid. For such an exchange, if it were not objectionable for other reasons, would at least be contrary to the order that is sought to be established by the obligation, or would introduce an order that would be easily subject to violation, page 204. Therefore, a custom that is connected with such an agreement, even if it is centuries old, would not be reasonable, and would therefore be lacking in strength, ibid. Holy Orders. For the effect of Holy Orders, someone can be subject to the Bishop by reason of origin, benefit, domicile, and familiarity, page 340. Holy Orders cannot be considered null and void due to a lack of intention on the part of the one who received the sacraments, unless it is shown that the intention of the recipient was, in fact, positively contrary during the act of Ordination, page 450. Such a contrary intention is shown in external form by proof of coercion that was imposed during the act of Holy Orders, which is called absolute, ibid. Coercion, which is said to be causative, does not prevent Holy Orders from being valid, for a coerced will is still a will, ibid. If Holy Orders are valid, the obligations attached to the diaconate are not considered binding if it is shown that the one being ordained was directly compelled by force and grave fear to receive Holy Orders, ibid. If there is a lack of sufficient proof of such coercion, a dispensation may be granted, whenever, considering all the circumstances, it seems expedient to the Holy Congregation, page 451. Such causes are similar to matrimonial causes and those of religious profession; therefore, they are treated in the same way in ecclesiastical tribunals, ibid. Those who come to Rome and reside here for four months, if they desire to be promoted

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to the Orders, cannot refuse to undergo the examination in Rome, even if they have received letters of dismissal from their own Ordinary, however extensive they may be.

[*Latin ed. p. 713*]

INDEX G: Regarding the dispensation necessary for performing certain sacraments, and the requirement of written authorization from the Eminence, the Vicar of Rome, page S92. He who, disregarding the aforementioned dismissal letters and not returning to his proper Ordinary, seeks another diocesan Bishop outside of Rome and receives Orders from him, is thereby suspended from the exercise of Orders, and remains so suspended until the censure is lifted by the Holy See, ibid. Indeed, he also falls into suspension who, having been disapproved in an examination presented in Rome, and without obtaining permission, and without renewing the examination in Rome, returns to his diocese and begins to administer the Sacraments there, ibid. Regarding the rights of Parish Priests. Questions that repeatedly arise between Parish Priests and the Patrons of chapels or the Rectors of churches located within the parish boundaries, must be resolved according to the norms of the Decree of Rome and the World, 1703, page B17. Such a Decree limits the jurisdiction of Parish Priests within their parish to those rights that are properly and exclusively parochial, ibid. Among such rights is not found jurisdiction over churches or chapels that are within the parish boundaries, ibid. However, such principles are tempered by reasonable customs, diocesan laws, or legitimate conventions, ibid. According to the sacred Canons, when the right of refusal was in effect, Parish Priests had a fundamental right over all offerings made within the parish. Therefore, offerings made to a chapel were considered to be made to the Parish Priest, unless otherwise stated, ibid. Regarding the Removal of a Parish Priest. A Parish Priest, who, according to the sacred Canons, is appointed to the parish, can be removed from the parish either by deprivation, or by a simple economic removal, which can be either permanent or temporary, page 283. Deprivation cannot be imposed unless it is established that there are very serious faults, for which the deprivation penalty, which is the most severe according to law, is inflicted, with strict adherence to the judicial procedure prescribed in these cases, ibid. An economic removal occurs for two reasons: either due to the Parish Priest's incompetence and unsuitability to properly manage the parish, or due to serious hatred and aversion of the people, in which case the Parish Priest cannot properly serve his parish, page 284. In the case of a temporary economic removal of a Parish Priest, provision must be made for the parish by an administrator, or a suitable Vicar who will perform the duties of the Parish Priest, with a designated portion of the income assigned to him, ibid. In the case of a permanent economic removal, provision must be made for the Parish Priest by the assignment of another benefice, ibid. Regarding the Residence of a

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Parish Priest. According to the law regarding residence, a Parish Priest must reside in the parochial church building, or in a nearby house, if the former is unavailable, page 294. A Parish Priest does not fully satisfy the law regarding residence if he establishes his residence outside the parochial building, even if it is located within the boundaries of his parish, ibid. Therefore, a Parish Priest who neglects his residence must be compelled by legal remedies to fulfill his obligation to reside in the parochial building; nor can he easily be excused on the grounds of unhealthy air, or due to the company of relatives, or for other reasons of importance, ibid. Prescription and Custom. The force of prescription is not acquired by observances that, although prolonged for a long time, are shown to have been either facultative, or physically necessitated, page 295. A long-standing custom that arose from a manifest error, and is contrary to the explicit law of foundation, is not upheld, page 229. Constant grants made by the Apostolic Delegation under the title of vacation, or renunciation, in the hands of the Holy Father, do not cause any detriment to the Patrons regarding the right of patronage, ibid.

[*Latin ed. p. 714*]

714 INDEX GENERALIS. A custom, though not based on law, which is consistently observed as if it were a law, has the force of written law, page 469. Practices of the Sacred Congregations. The Sacred Congregations, although they resemble tribunals, do not follow the same judicial procedures as other tribunals, and should follow them, page 416. Indeed, they act in a special way in the name of the Supreme Pontiff, as administrators and guardians of things and persons, according to the special faculties granted to them by the Holy Fathers, page 417. Controversies that are settled within them are either considered to be resolved in order, or to be dealt with economically, ibid. In all cases where controversies are settled by the Sacred Congregations, except perhaps for one or the other type of case, the losing party is not obliged to pay the costs of the litigation for the winning party, page 418. The Sacred Congregations, when judging cases brought before them, do not usually introduce innovations when the episcopal see is vacant, which can be better done when the see is filled, page 217. Proof of violence and fear. Proof of violence and fear can be established in two ways: either by showing the nature of the coercion or the cause of the fear was serious, or by showing that the coercion and fear produced serious effects on the person who suffered them, page 20. The second of these is called "proof of coercion" or "proof of reverential fear"; the first is called "proof of violence," ibid. And fear that falls into constant dread is understood in two ways, absolutely and relatively. For the violence, or the cause of fear, can be terrifying to anyone absolutely, or relatively, taking into account the persons to whom it is applied, who are considered in their own order, ibid. Therefore, violence and fear are considered serious, even if they only affect a constant child, or a constant girl, or a constant old

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person, etc., according to the order of the persons to whom the coercion and fear are applied, ibid. Judicial process. The acts of a judicial process, which must be performed to render a judicial sentence, must be completely distinguished from those acts that are performed without observing at least the substantial or canonical form, page 400. The acts of an ordinary process, as a judge endowed with jurisdiction, proceed to issue a sentence based on the same acts and proofs, which, when issued, produce several legal effects, ibid. On the contrary, acts of the second kind are not, in themselves, suitable for establishing the basis of a judgment to which a judicial sentence is attached: they can only serve for a private investigation, and if a judicial sentence is issued based on them, it is invalid, ibid. The production of many witnesses in a judicial process can be rejected by the judge if that production seems excessive, or completely useless for determining the case, page 406. It does not matter whether this occurs on the third, or even the second, production of witnesses; it is sufficient that the reasons for this exist, so that the prudent judgment of the judge will prevent excessive production, ibid. Simple Vows. Although the authority to extend the prescribed three-year period of simple vows by Superiors of Regular Orders, about which mention is made in the Encyclical Letters, has been granted: this same authority is completely denied if those who have taken simple vows have completed the age of 25, page 162. This is especially true if those who enter Religion have already reached that age, unless the Order has been granted permission to postpone the solemn profession further, ibid. For a particular permission does not extend beyond the prescribed limits, even though reason might seem to support it, ibid. Although, in general, those who have taken simple vows in a Regular Order are in many respects -

[*Latin ed. p. 715*]

Those who have made solemn vows are included among the professed; however, they do not have the right to participate in the major affairs of the Order, such as those discussed in provincial chapters, page 101. In the distinguished Order of Jerusalem, moreover, special reasons exist why those who have made solemn vows may be denied the right to cast a vote in chapter meetings, page 102. Nor does such a denial of rights contradict the Apostolic Letters: Militarem Ordinem. In these, it is stated only that those who abandon the Order lose all those privileges with which they could enjoy the force of simple vows within the Order, ibid. However, they do have the right to vote in the acts of their own chapter meetings, which do not pertain to solemn profession, ibid. The time of probation was instituted by the Holy Fathers for the purpose that the novice might experience the hardships of the monastery, and that the character of the novice might be tested, page 305. This prescribed time of probation, although religiously to be observed, did not pertain to the essential form of the act of religious profession, ibid. Therefore, if the time of probation was not strictly observed,

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both the novice and the abbot of the monastery seemed to renounce that which was introduced for their own benefit, ibid. The Council of Trent, in Session 25, chapter 1, prescribed a clause that the annual period of probation must be observed, thereby introducing this time into the form of the act, to which neither can any longer renounce, page 306. The decree of the Holy See states: It is not unknown that, in this our age, the time of religious profession is wisely extended, with simple vows prescribed in the meantime, and that this does not pertain to the form of the act, to which a clause of nullification has not been added, ibid. A solemn Constitution, Ad Universalis, has been issued, stating that the profession of simple vows, after probation or novitiate has been duly completed, and the continuation of those same vows for a full three years, pertain to the form of the act, ibid. RELIQUIAE SACRAE. The Holy See has always held, as a certain sign of tolerated martyrdom and reported triumph, glass or earthenware vials stained with blood, or at least blood clots, which are affixed either inside or outside the burial niche, page 174. In past centuries, when the Church flourished and triumphed through the blood of martyrs, it did not fail, as far as possible, to deposit the sacred bodies and the venerated remains of those bodies in niches, with signs so that the memory of the tolerated martyrdom, which would be an example and a source of veneration for others, would not perish, page 173. When considering relics that at least do not claim public and memorable veneration, the Holy See does not approve of a proof that generates probability, and indeed a serious probability, of the authenticity of such relics, but not moral certainty, page 106. The ancient and constant traditions of the Church, which testify to the authenticity of their relics, are to be held in great esteem, page 252. Therefore, it is not easily denied, nor should the authenticity of such relics be put in doubt, because of certain difficulties arising from elsewhere, which seem to contradict these traditions. For a long possession by tradition, and a prescribed custom, are not nullified unless by a peremptory exception, ibid. According to ecclesiastical language, the words or inscription "corpus Sancti..." are also understood to mean a part of the body; just as "corpus integrum Sancti..." is sometimes said, even though some parts may have been removed, ibid. Among the sacred relics, the place of greatest dignity is held by the wood of the Holy Cross, upon which the Immaculate Lamb was affixed, page 581. Therefore, out of reverence for so great a Victim, the faithful, by universal custom, have always shown and continue to show special veneration for the relics of the Holy Cross above all other relics, ibid.

[*Latin ed. p. 716*]

716 INDEX GENERALIS. For the promotion of this veneration, with the authority of the Church added, particular and special rites have been approved, ibid. Therefore, it is entirely appropriate that the sacred wood

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be exposed to public veneration, mixed with the relics of the Saints in the same place, and conversely, ibid. This presumption (which arises from the fact that! an honest girl would never be led into such a thing?, unless it is a disgrace to herself, unless there is certainty of a future marriage) ceases, if there are indications that the girl and her parents do not seem to consider the girl's own or her daughter's honor to be of the greatest importance, ibid. Capitular Statutes. Simony. He who confesses to having been involved in the crime of simony, does not have the force of testimony against his accomplice: especially if other arguments are lacking, page 533. See also p. 406 in Note. Sodalities. The establishment of Sodalities of the Most Holy Body of Christ in each parish is highly recommended, page 296. If the purpose of a sodality remains firm, the statutes that regulate its order, prayers, and the manner of performing works that contribute to its purpose, are at the prudent discretion of the Bishop, according to the nature of the people and places, page 538. It is not necessary to obtain indulgences to join a sodality that follows the statutes, prayers, and manner of performing works of the Archsodality: for it is not through these, but through the purpose that the sodality has set for itself, that it is joined, and it is considered to receive the same indulgences, ibid. However, if indulgences are among those that are attached to particular prayers, or to a certain prescribed manner of performing works, members, if they do not fulfill these, will not gain those indulgences, except for the lack of the prescribed work, ibid. Marriages. The obligation of marriage, which arises from a "free and deliberate will, by which one party promises, and the other repromises marriage, about which they are speaking, must be proven conclusively, excluding all doubt, page 147. In the event of a delay, if an explicit promise is lacking from the woman's side, it is presumed to be from a shameful act, if the girl is demonstrably honest, ibid. Chapters must be completed under obligation: their own constitutions, in accordance with the law, if they do not have them, page 217. They must deliver these to the Bishop for confirmation, and if they neglect to compose and write them, the Bishop can compose them and deliver them to the Chapter, page 221. Suspension. The Bishop's inhibitory decrees must not be confused with decrees of formal suspension, p. 284. The Council of Trent strongly recommended to the Bishops that they take care that those things which are dedicated to sacred services do not become obsolete due to the ravages of time and fall out of the memory of men, page 464. Therefore, if it happens that churches collapse and cannot be restored due to their poverty, simple benefices and other pious endowments must be transferred to another church, according to the terms of said Decree, ibid. Care must be taken that collapsed churches are not converted to sordid uses, ibid. Among the legitimate causes for converting churches to profane uses, especially if they are small, the abandonment of the same, for which they collapse, must be considered, as well as the fact that they open the way to irreverence and disgrace, so that the people may not benefit from

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their restoration, ibid. Theological Benefice. Constitution of Benedict XIII. The pastoral office, for Italy and the adjacent islands, was first published, in which it is prescribed that a theological and penitential conferral must always be given to him who has been judged by the examiners to be more worthy, in no way to be excluded.

[*Latin ed. p. 717*]

INDEX G: The judgment of the Bishop, by which he can assign a position to one whom he deems more suitable, page 81. The theological benefice, which must be determined according to the Tridentine law, is so connected with the office of theologian that it cannot be held by anyone other than a theologian, page 513. VERALIS. 717: Secular matters belong to the laity; certain matters are in the middle ground, and are therefore called mixed jurisdictions, page 356. Therefore, these are not subject to the right of presentation: for the person who is suitable by law for the office to be performed must be preferred, page 574. In mixed jurisdictions, he who has the right to judge the cause has the right to judge between two judges, that is, the one who first undertakes to hear the cause, ibid. Among the causes in mixed jurisdictions, pious legacies, which are certainly intended for divine worship or for works of mercy, are reckoned by the common opinion of the authors, ibid. Although, according to the Constitution of Benedict XIII, the theological benefice in Italy and the adjacent islands is to be conferred by a joint appointment, as with parochial churches; however, this benefice is not subject to the right of presentation of a lay patron, ibid. The execution of a pious legacy, which pertains to divine worship, pertains exclusively, or at least primarily, to the ecclesiastical judge, ibid. The cause for the settlement of a pious legacy also pertains exclusively to the ecclesiastical judge, if local custom permits, ibid. For in this case, it is sufficient that the Ordinary, who is to institute the presentation, ascertains the simple suitability of the presentation from the patron, ibid. Competent Tribunal: The tribunal before which a man is legitimately summoned by his wife is competent to judge the counter-claim made by the woman in the same suit by the man; although, by reason of domicile, the woman is not considered subject to the same tribunal, page 137. Although anyone may, according to the head of the Law of Forums, be subject to a forum by reason of crime, contract, domicile, or the location of the thing; nevertheless, the forum of domicile is said to be and is natural, ordinary, and universal, and runs concurrently with the others, page 141. The competence of any ecclesiastical tribunal in a matter pertaining to it is denied because of the reason that the plaintiff or defendant is not considered subject to the civil jurisdiction in which the said tribunal exists. It is sufficient that the defendant summoned is subject to some ecclesiastical court according to the doctrine of canon law, so that he can be summoned there, ibid. The wife is subject to the forum in which her husband has his domicile, ibid. Among ecclesiastical or spiritual causes,

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which pertain exclusively to the ecclesiastical forum; and purely temporal causes, which pertain to the forum: Union of Parishes. In churches that are said to be united, three qualities of union are clearly distinguished, namely, promiscuous, subjective, and equally principal, page 293. Different qualities of union give rise to different rights and obligations, page 294. In parishes united by a subjective union, the parish priest must reside in the church, which is usually called the mother church, and is not bound by the obligation to apply a second Mass for the people. For from this real union, only one parish arises in fact and in name, ibid. In parishes united by an equally principal union, the parish priest must reside in one or the other, or even alternately, for the different annexes of the churches, and is bound by the obligation to apply a second Mass for the people. For in this union, two distinct and different parishes remain, which are united rather by the identity of the rector, ibid. Catholic Unity. Just as the Apostolic See of Peter rejoices when it knows of those who have strayed from the right path, who have abandoned their mother, and who wish to return to her bosom: so it is compelled to reject with sorrow those who do not seek true and real Catholic unity, page 668.

[*Latin ed. p. 718*]

718 INDEX G For the Catholic Church cannot be any other than that which is built upon one Peter, which rises as a united body, closely connected and compact through the unity of faith and charity, ibid. Such a united and compact body is perpetually the true property of the Church of Christ, and the most splendid mark by which the Church itself is safely and easily distinguished from all sects, ibid. Therefore, any unity which does not draw its power from Peter, living perpetually through his successors, and which does not arise from the unity of faith and charity, or communion, ought rather to be called a mockery of Catholic unity, than Catholic unity itself, ibid. Perpetual Vicariate. A perpetual vicariate is equivalent to a true benefice, lacking only the title which is found in another, page 508.

[*Latin ed. p. 719*]

A WARNING TO THE MOST WORTHY READERS CONCERNING THE ESTABLISHMENT OF A SOCIETY DEDICATED TO THE PRINCIPAL APOSTLES. When this volume reaches the hands of the Most Worthy Readers, they will receive a certain Program, which we have been considering publishing in Rome, as the most solemn Feast of the Principal Apostles approaches. And so, we present this to our Readers, so that, with perfect understanding, they may desire to promote the society about which we speak. Already, we have had the names of certain Ecclesiastical Men in Rome who have undertaken the office of Promoters in the founding of this society; and these names will be made public in due time. Therefore, we implore our generous Readers, who are well-disposed in this matter,

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to offer their names, accepting either the office of Promoters or that of Benefactors; for the matter for which this society is instituted should be considered as virtually completed if each Reader undertakes the office of Promoter, or at least strives to find others to take their place. Thus, through a small effort, and indeed not a burdensome one, each individual will initiate a great work for the honor of the Principal Apostles, which will be of service to the Church.

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